THE NYAYA PANCHAYATS

ROAD TO JUSTICE

MARCH 1964

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Ministry of Community Development & Co-operation
Government of India

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OFFICE OF THE PRINCIPAL RURAL EXTENSION TRAINING CENTRE
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ADUTHURAI

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CONTENTS

Chapter		Page
I.	Introductory.	1
II.	Be true to your oath of office.	3
III.	Your jurisdiction in general.	8
IV.	How are proceedings initiated before you.	14
V.	Hear the other side	17
VI.	Do not be a judge in your own cause.	22
VII.	Keep within your jurisdiction.	27
VIII.	Your role in bringing about compromises.	35
IX.	Observe the prescribed rules of procedure.	39
X.	Observe certain precautions as based on prudence.	48
XI.	Act only on the evidence before you.	53
XII.	Give reasons for your decisions.	57
XIII.	Your records are sacred documents.	60
XIV.	Conclusion.	64
	Appendix.	65

FOREWORD

This book is intended to carry out one of the recommendations of the Study Team on Nyaya Panchayats that a manual should be prepared which would impress upon nyaya panchas what acting judicially means and which would explain to them how they should conduct themselves in the discharge of their judicial duties. Failure to act judicially is much more serious than committing a mistake in law. It is hoped that by reading this book or having it explained to them, nyaya panchas would be able to get a better insight into their work and a better appreciation of the law that they are called upon to administer.

This book could be revised from time to time in the light of experience gained and comments made.

24th March, 1964

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Chapter I

INTRODUCTORY

Role of nyaya panchas

1.1. Sitting in judgment upon fellow villagers is an onerous responsibility and the reputation and indeed all that the parties hold dear in life may depend upon the decision that is given. Nyaya panchas have therefore to observe great caution and a certain degree of humility in the discharge of their functions. At the same time they must be fearless. They must bear in mind that all are equal before the law and that the law is no respector of persons. They must conform to the principles of natural justice and must not only avoid bias, ill-will or affection but must appear to have so avoided them. They must realise that they owe certain duties to the State, to the society and to the parties. They must administer justice in such a way that respect for the law is maintained. At the same time justice should, wherever possible and proper, be tempered by considerations of amity in village life in the sense that endeavours should be made to reconcile the parties and to eradicate the causes of the dispute and thus pave the way for better and harmonious relations. This should not, however, be construed to mean that greater consideration should be shown to the offender than to the injured person.

1.2. The nyaya panchas occupy a well defined place in the judicial heirarchy although in the methods adopted for arriving at the truth of cases tried by them there is considerable dissimilarity between them and the ordinary courts. As persons performing judicial functions they are entitled to respect from their fellow men, both official and non-official, and to the co-operation of all Government officials in any way connected with their work, more particularly the police officers. Without such help the nyaya panchas may find it difficult to discharge many of their duties. On their part, their constant endeavour should be to conduct themselves in such a way as to deserve that respect and co-operation.

1.3. The provisions of the law under which they have been constituted and function, the provisions of law which they have to apply and the procedure which they have to follow in deciding cases will all be found explained in detail in the State manual on the subject. These have to be clearly understood and carefully applied or followed. But for a proper appreciation of their work, for facilitating the understanding and application of laws and for avoiding the pitfalls which lie in the path of a layman unaccustomed to legal procedures, nyaya panchas may with advantage read or be taken through the following chapters which explain to them in the form of personal talks what acting judicially means and what is expected of them in their capacity as nyaya panchas.

CHAPTER II

BE TRUE TO YOUR OATH OF OFFICE

Oath for nyaya panchas

1. Before entering upon your office as a nyaya panch, you would invariably be required to make and subscribe an oath or, if your religious belief does not permit it, a solemn affirmation somewhat in the following form :—

"I, ____________________
(the name of the panch being mentioned)

having been elected / co-opted / nominated as a member of the nyaya panchayat of ____________________
(the nyaya panchayat circle being mentioned)

do swear in the name of God / do solemnly affirm that I will conscientiously and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office in accordance with law, without fear or favour, affection or ill-will".

Its significance in general

2. What is the significance of this oath or solemn affirmation and why are you required to take it? In fact, if a nyaya panch enters upon his duties without taking the prescribed oath or solemn affirmation, he would be functioning without authority and the decision of the nyaya panchayat of which he is a member might well become valueless.[1] Why is this so? If you read carefully the oath you are required to take, you will realise immediately that its object is to bring home to you in all solemnity the great responsibility that is being placed upon your

[1] *Jagernath* v. *Rameshwar*, I.L.R. 33 Pat. 557.

shoulders. Every word in the oath has a special meaning. You may owe your office to election by your fellow villagers or by the members of the Gram Panchayats in the circle; you may have been co-opted as a nyaya panch by the members of the nyaya panchayat on which you are to serve; or you may have been nominated by a governmental agency. But once you are chosen as a nyaya panch, whatever be the method by which you have been chosen, the oath tells you right at the threshold of your office that the manner of your appointment is totally irrelevant in the discharge of your duties. Assume that you have been elected either by your fellow villagers or by members of the gram panchayats in the circle. The oath is intended to tell you that any relationship which you may have with the people who have elected you, whether as members belonging to the same political party, caste, clan, group or community or even as friends, can have no bearing whatsoever on the discharge of your duties. In fact, the Nyaya Panchayat Act under which you are appointed would in all probability have provided for your removal from office if, after assumption of office as a nyaya panch, you continue to be in active association with any political party or any religious, racial, language, caste or communal group, thereby rendering your continuance in office undesirable in the public interest. Assume that you have been co-opted by your fellow members in the nyaya panchayat. You must understand that the co-option is not for the purpose of requiring you to merely toe the line of the persons co-opting you. Similarly, where you have been nominated by a governmental agency, it does not mean that you represent the Government in any way and therefore have to act as its mouthpiece or that you owe some kind of loyalty to the Government in the discharge of your purely judicial duties.

Panchas to act conscientiously and faithfully

3.1. Let us now proceed to examine in detail the various expressions which occur in the oath. First, you are told that in the discharge of your duties you should act conscientiously and faithfully. Acting conscientiously means that in whatever function you may be called upon to perform, you should see that your moral sense of what is right and what is wrong does not

feel hurt. There is in everyone of us, whatever his educational qualification or status in life may be, an innate capacity to discriminate between what is right and what is wrong. In fact, justice really means, as an eminent jurist has put it, what right minded members of the community, that is to say, those who have the right spirit within them, believe to be fair. Every decision which you may give or to which you may be a party must pass this test, that is to say, it should be in complete harmony with your moral feelings on the subject. For your guidance and to simplify your task, there is the enacted law which you are called upon to administer. The enacted law is generally regarded as enshrining the collective wisdom of the community as to what is right and what is wrong. If you administer this law honestly and truthfully and to the best of your understanding, your conscience is bound to be satisfied. And when, in addition, the oath tells you that you should be faithful in the performance of your duties, it only seeks to further emphasise the fact that your loyalty is to the law and to your duties thereunder and to nothing else and that you should be truthful in their performance.

3.2. Remember that the oath does not ask you to do the impossible. You have been chosen by your fellow villagers or, as the case may be, by the Government because of your character, antecedents, experience, education, status in the village community, the regard and esteem in which you are held and so on. You must understand that behind your choice lies the feeling that here is a man who can be expected to do right between villager and villager or even between the villager and the Government. Even assuming that the motives behind your choice were otherwise, you must understand it only in this spirit. To be called upon to decide disputes between members of a community is indeed a very honourable and sacred trust and you must discharge the obligations attaching thereto in a spirit of dedication and service and to the best of your ability, knowledge and judgment. You are not expected to write learned judgments. Most of you, if not all of you, are laymen, not learned in the law as the regular judges are. The law recognises this fact. Consequently, the cases which come before you will only be of a simple character. The procedure you will be

called upon to follow will also be equally simple. You will be given a brief course of training in the law which as stated before is based on common sense and the wisdom of the community. In addition, you will have some kind of secretarial and other assistance. With this equipment you should have no difficulty in discharging your duties, and if you act truthfully and to the best of your ability, knowledge and judgment, there is no doubt that you would have done a good job and your conscience is bound to be satisfied.

In accordance with law

4. All your actions must be in accordance with law. This essential obligation should never be forgotten by you. There is the enacted law which you will be called upon to administer and which you will find dealt with in a simple manner in a separate compilation of the State Government. In the succeeding chapters you will be told generally how a person vested with judicial functions is expected to act in the performance thereof. If you keep the general instructions contained in this volume in mind while applying honestly and truthfully the relevant law as contained in the companion volume aforesaid, you will find that you have done a remarkable piece of work—a work which is bound to be mentally satisfying and for which you will have earned the gratitude of the entire community. Remember always that you have to dole out justice in accordance with law and that you should never be guilty of injustice in any form.

Without fear or favour

5. Lastly, the words most often quoted from the oath are 'without fear or favour, affection or ill-will'. These words of extraordinary import are intended to bring home to you a full sense of your independence. These words tell you that in coming to your decisions, you are not subject to the dictates of any one else. The law is there to guide you and you must act in accordance therewith conscientiously and faithfully. Remember that you are a judge and while functioning as such you have no friends or enemies. You have no interest whatsoever in the cases which come before you except as a judge who has been called upon to decide the disputes involved. The parties before you may happen to be your friends or men belonging to your own community or caste, as they may

well be, particularly in villages; but once they are before you in the nyaya panchayat as parties to a dispute, you should regard them as two ordinary persons unconnected with you who have a dispute to be settled by you as a person in whom the village community, including themselves, have full confidence, for the purpose of getting it resolved in the light of what is right under the law. The scales of justice which you hold must weigh the dispute with absolute impartiality. You have no favour to gain from any quarter, nor have you any favour to grant. You are not, and should not be, afraid of the parties, whatever their respective status or character in the village may be, or of the consequences of your decisions rightly arrived at. You are not to be influenced by any family, political party, caste or other similar considerations in the decision of disputes. You cannot harbour any ill-will towards any party to a dispute notwithstanding that as a member of the village community you are perhaps not well disposed towards him.

Conclusion

6. These are broadly the implications of the oath or solemn affirmation which you are required to make and subscribe, and, if you understand them rightly and act in conformity with the general instructions contained in the succeeding chapters, which are really intended to explain to you what acting judicially means, you will find that, far from incurring the wrath or displeasure of any villager because of any decision adverse to him, you have in the long run earned the appreciation, gratitude and respect of the entire village community and obtained the additional satisfaction of having been of valuable service to the State.

Chapter III

YOUR JURISDICTION IN GENERAL

Proceedings before nyaya panchayats generally

1. The proceedings which come up before you for trial will ordinarily be of two kinds—civil and criminal.[1] Normally these two classes of proceedings are easily distinguishable. Let us now see what their distinguishing features are.

Nature of civil proceedings

2.1. In a civil proceeding of the type you are likely to be called upon to decide, the reliefs asked for would, broadly speaking, fall within the following categories :—

(a) *Payment of money*.—The bulk of your cases would fall within this category. Claims for payment of money would ordinarily be based on contracts, that is to say, agreements made by the free consent of persons competent to contract, for a lawful consideration and with a lawful object.

To be competent to contract a person must have attained the age of 18 years and must be of sound mind.

The consent must be free, that is to say, it should not have been brought about by coercion, undue influence, fraud, misrepresentation or mistake. The following illustrations may be of help to understand what is meant by consent being free. 'A' agrees to pay a sum of money to 'B' because 'B' has threatened 'A' with bodily harm if he does not agree to pay it. Here the consent is not free but has been brought about by coercion and 'A' can avoid the contract. 'A's son has forged 'B's name to a promissory note. 'B' threatens to prosecute 'A' if 'A' does not give 'B' a bond for the amount of the forged note. The consent of 'A' to the bond has been brought about by undue influence and 'A' can avoid the contract. 'A' agrees to buy a cow from 'B', who tells 'A' that it is a milch cow when in fact he knows it to be dry. This is a case of

[1]Revenue jurisdiction is not being referred to because it is assumed that for the time being no such jurisdiction will be conferred on nyaya panchayats as recommended by the Study Team.

consent induced by fraud and 'A' can avoid the contract. If, however, 'B' did not know that the cow had become dry when he made the statement. 'B's conduct would amount not to fraud but to misrepresentation and 'A' can avoid it on that basis. 'A' agrees to buy from 'B' his cow which 'B' for the time being has left in the custody of someone else in another village. At the time of the agreement the cow was dead but both the parties were not aware of this fact. Here both the parties are under a mistake as to a fact essential to the agreement. There can be no agreement in such circumstances and it is therefore void.

The consideration or object of the agreement must be lawful, that is to say, it should not be forbidden by law; or, it should not be of such a nature that, if permitted, it would defeat the provisions of any law, or it should not be fraudulent or it should not involve any injury to the person or property of another or it should not be immoral or opposed to public policy. In the following cases the consideration or object of the agreement is not lawful and any claim based on any such agreement cannot be entertained. A claim based on a gambling debt; a claim based on an agreement to divide money obtained by fraud or cheating; a claim for money for assaulting a third person under an agreement; a claim for the hire of one's daughter for the purpose of concubinage; a claim for using one's influence with a Government official for procuring a favour for another.

Claims for payment of money which are enforceable before you may arise under a variety of circumstances. Thus where 'A' has lent money to 'B' which 'B' has failed to repay, 'A' may ask for a decree for the amount of the loan; where 'A' has done some work like putting up a fence or a bund for 'B' under an agreement for payment and 'B' has not paid the amount due, 'A' may ask for a decree for payment of money for the work done; 'A' may have sold goods to 'B' for which the purchase price has not been paid by 'B', and 'A' may make a claim for the purchase price. 'A' may have employed 'B' as his servant for a certain period. 'B' may be claiming his wages for that period. A claim for payment may also arise as where 'A', a shopkeeper, leaves goods at 'B's house by mistake and 'B' treats the goods as his own. Here 'A' did not intend to make a gift of the goods and as 'B' has used them he must make payment therefor.

Ordinarily a contract need not be in writing. It need not also be registered. It may be oral. It may be implied in the very nature of things.

(b) The second category of cases would be for the recovery of movable property. Here are a few simple illustrations of this type of cases. 'A' has lent his agricultural implements to 'B' for the latter's temporary use which 'B' fails to return; or 'A' has deposited some article belonging to him with 'B' for safe-keeping and 'B' refuses to deliver the same even though 'A' is prepared to pay all reasonable charges for its storage. In either case 'A' may sue 'B' for the recovery of his movable property.

(c) The third category of cases would be claims for compensation for wrongfully taking or injuring some movable property belonging to another or for damage to one's property by cattle belonging to another trespassing upon it. Thus where 'A' trespasses upon 'B's land and removes the grass growing upon it without 'B's consent, 'B' would have a claim for compensation. Or 'A' may have wrongfully seized and impounded 'B's buffalo. 'B' may ask for compensation for the wrongful seizure of his movable property.[1]

Damage by cattle trespass is simple enough to understand. It occurs where cattle, which may include cows, buffaloes, oxen, horses, ponies, mules, asses, sheep, goats etc., belonging to one person cause damage to crops or other produce of land belonging to another person.

2.2. The above are all simple civil proceedings. There may be other categories of civil proceedings in respect of which also jurisdiction may be vested in you. For ascertaining this jurisdiction, you will have to consult the Act under which you function. Briefly stated, in a civil proceedings, what is generally enforced is a duty or obligation which one person owes to another, and such proceedings are instituted at the instance of the party entitled to enforce it.

Nature of criminal proceedings

3.1. In a criminal proceedings, on the other hand, the breach of duty of which complaint is made is really to the public at large.

[1] *Alla Malua Kurmi* v. *Civil Judge, Raipur*, A.I.R. (1953) Nag. 213.

offences like theft, receiving stolen property and the like are all offences against the community or the State and ordinarily proceedings should be initiated by the State. But in view of the smallness of your jurisdiction,[1] here also, the proceedings would be initiated by a complaint by the person wronged. For example, when 'A' assaults 'B', or commits mischief by setting fire to 'B's haystack or threatens to burn 'B's haystack if 'B' persists in prosecuting his civil case against 'A', 'B' may come before you with a complaint for the punishment of 'A' by fine, or if the power is vested in you, by imprisonment as well.

3.2. The following are some of the offences in respect of which jurisdiction would ordinarily be vested in you :—

Affray (Section 160, Indian Penal Code); voluntarily causing hurt (Section 323, Indian Penal Code); assault or use of criminal force otherwise than on grave and sudden provocation (Section 352, Indian Penal Code); assault or use of criminal force on grave provocation (Section 358, Indian Penal Code); theft (Section 379, Indian Penal Code, when the value of the property stolen does not exceed a certain sum); receiving stolen property (Section 411, Indian Penal Code, where the value of the property stolen does not exceed a specified sum); mischief (Section 426, Indian Penal Code, where the loss or damage caused does not exceed a specified sum). Other offences under special Acts like the Prevention of Cruelty to Animals Act or the Primary Education Act may also be triable by you, and as in respect of civil cases you should consult your Act for ascertaining this jurisdiction.

3.3. It is necessary to mention here that all offences should be read subject to the exceptions in Chapter IV (General Exceptions) of the Indian Penal Code. The more important of the exceptions are :—

(i) acts resulting from accident or misfortune in doing lawful acts in a lawful manner;
(Section 80, Indian Penal Code);

(ii) acts of children under seven years of age;
(Section 82, Indian Penal Code);

(iii) acts of children above seven and below twelve who have not attained sufficient maturity of understanding

[1]See in this connection the discussions in Chapter VII.

to judge the nature and consequences of their conduct on the occasion; (Section 83, Indian Penal Code);

(iv) acts of persons who by reason of unsoundness of mind are incapable of knowing the nature of their acts; (Section 84, Indian Penal Code);

(v) acts causing so slight a harm that no person of ordinary sense and temper would complain of such harm; (Section 85, Indian Penal Code);

(vi) acts done in private defence. (Section 96, Indian Penal Code).

Acts complained of as offences cannot be so regarded if they are covered by any of the above exceptions.

Acts giving rise to civil and criminal proceedings

4. In a few cases, the same act may give rise to a civil as well as a criminal proceeding, as where 'A' causes his cattle to damage the crops grown by 'B' on his field. In this case 'B' may either choose to ask for compensation for the damage caused, in which case it will be a civil proceeding, or he may proceed against 'A' criminally for mischief.

Test for deciding whether proceeding is civil or criminal

5.1. If therefore you have regard to the nature of the relief claimed or claimable you would ordinarily have no difficulty in deciding whether a particular proceeding is a civil proceeding or a criminal proceeding. Several cases have come to light in which the distinction between the two has not been understood and civil suits have ended in the conviction of the opposite party and criminal cases have ended in decrees for damages being passed. For instance, in a civil suit for damages for wood wrongfully removed, the defendant was convicted by a nyaya panchayat. In another case, in a suit for compensation for damages caused to a field, the nyaya panchayat found the defendant guilty of mischief. In a third case, where a complaint of a criminal offence (criminal trespass or criminal intimidation) was made, the nyaya panchayat passed a decree for damages against the accused person.[1] All this is clearly wrong; and the convictions and decrees in all the above cases have had to be set aside. It is essential that in the interests of the parties

and for ensuring proper trials the exercise of the two jurisdictions is kept distinct and separate.

5.2. To make matters easy for you, the terminology adopted is different in each case. In a civil proceeding the person who comes before you for relief is called the plaintiff. He initiates the proceeding by a plaint. The other party is called the defendant. The proceeding is called a suit and it ends up with a decree. In a criminal proceeding, the party who first approaches you is called the complainant. He initiates the proceeding by a complaint. The other party is called the accused and the proceeding ends with an order of acquittal or of conviction followed by a sentence of fine or imprisonment.

[1]See for example, *Sri Nath* v. *Bhagwan Din,* (1955) All. L.J. 756

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CHAPTER IV

HOW ARE PROCEEDINGS INITIATED BEFORE YOU

Procedure for trials

1. Let us now take up a civil proceeding and a criminal proceeding separately in order to trace in this and in the succeeding chapters the course of each of them from its inception to the end. In this way it will be easier for you to understand the various steps to be taken under those few rules of procedure which you may find prescribed for your trials, the reasons for such steps and the judicial principles, if any, involved therein. Above all it will enable you to clearly appreciate what 'acting judicially' means.

Civil proceedings, how initiated

2.1. Assume that 'A', a villager within the jurisdiction of your nyaya panchayat, has sold some hay to 'B', another villager within the same jurisdiction. If the price is not paid within the time stipulated, 'A' may come before you with a claim for payment by 'B' of the purchase price. The claim will be made in the form of a plaint in which 'A', after giving his name, address etc., will mention briefly the facts of the case giving rise to his claim, that is to say, the cause of action on which his claim is based. He would probably say that on a particular day (the day being specified) he sold a certain quantity of hay (the quantity being mentioned) to the defendant, that the defendant promised to pay for the said quantity of hay so many rupees on or before a particular day (the day being similarly specified), and that the defendant has not paid the same. The plaint will end with a prayer for relief in the shape of a decree for the purchase price. If the plaintiff is not able to write the plaint or get it written, he will probably require you to have the facts recorded, and, where you do so, you would be well advised to see (even if the rules do not say so) that it is signed by the plaintiff or his thumb impression is taken so that there is no dispute subsequently about the authenticity of the record. The rules will probably require you to have the suit entered in the prescribed manner in the registers maintained by you under the rules so that a proper record is kept of all proceedings that are brought before you.

2.2. The rules may prescribe a nominal court fee to be paid on the filing of each plaint. If there is such a provision you must ensure that the rule is complied with before the plaint is accepted. A proper account should also be maintained of any such payment. When the proper fee is paid you have no power to refuse to register a plaint except, it may be, on the ground that on the face of it the plaint shows that you have no jurisdiction to try it, as for instance, where the amount claimed is beyond your competence.[1]

Criminal proceedings how

3.1. A criminal proceeding would also be initiated more or less in a similar manner. Suppose 'A', a villager has assaulted 'B', another villager, or 'A' is alleged to have caused damage to 'B' by causing his cattle to enter upon a field belonging to 'B' in which paddy is being grown. The injured or the aggrieved party, namely 'B', may come before you with a complaint for the punishment of the offender 'A'. The complaint will mention the name, address etc. of the complainant, the name, address etc. of the person against whom it is being made and will describe the offence in sufficient detail, that is to say, its nature, the date of its commission and all other relevant circumstances. As in the case of a plaint, it is possible that you are called upon to have the complaint recorded by yourself where it is made orally, in which case a similar precaution of having the recorded statement signed by the complainant should be taken. As in the case of suits, the complaint is then entered in your registers as provided in the rules.

3.2. On complaints also a fee may be payable and where a fee is payable, you should take care to see that it is collected in the manner prescribed. Here also, you cannot refuse to accept a complaint once the fee is paid, unless on the face of it the complaint appears to be beyond your competence, *e.g.*, where the complaint relates to a murder or a dacoity.[2]

3.3. Where a complaint is made to the nyaya panchayat, the rules may provide for the examination of the complainant on oath in the first instance before any steps are taken on the complaint. This is to ensure that the criminal law is not set in motion unless

[1]See Chapter VII for a fuller discussion on the limits to your civil jurisdiction.

[2]See Chapter VII for a fuller discussion on the limits to your criminal jurisdiction.

the nyaya panchayat is satisfied that there is sufficient ground for proceeding with the complaint. If it sees no sufficient ground for proceeding with the complaint on such examination, it would invariably have been given the power to dismiss it.

Notice to the other party

4. The Nyaya Panchayat Act and the rules which apply will tell you what the next step to be taken in each case is. That step will invariably be to bring the allegations in the plaint or the complaint to the notice of the other party, namely, the defendant or, as the case may be, the accused, in order to ascertain what he has to say in the matter. As this step is of great significance in the trial of cases it deserves to be dealt with in detail in a separate chapter.

CHAPTER V

HEAR THE OTHER SIDE

Procedure of nyaya panchayats generally

1. The methods which may be employed by nyaya panchayats for discovering the truth of any matter in dispute are different from those employed in the ordinary courts of law. The nyaya panchayat is, no doubt, a court within the ordinary acceptation of the term, but the Legislature, in setting it up, has very wisely refrained from making applicable to it the complicated laws of procedure and evidence which apply in the case of ordinary courts. It has also prohibited legal practitioners from appearing before it. The reason is that in the nyaya panchayat the villagers should find a tribunal which is of the people, which is intimate, which understands the life and sentiments of the villagers, which provides greater opportunities for the amicable settlement of disputes and before which parties are not likely to tell untruths or half-truths or make exaggerated claims because of its nearness and intimacy. The Legislature has therefore left it to the nyaya panchayats to adopt any lawful method to ascertain the truth of every case.

Notice to opposite party

2.1. At the same time it must be conceded that this intimacy or nearness has its own drawbacks. The close association of nyaya panchas with the affairs of the village, their intimate knowledge of the character, ways and means of life and so on of their fellow villagers and the absence of proper guidance may lead them astray from the judicial path and incline them to prejudge issues or to come to hasty conclusions or to develop a bias in favour of one party or the other before them. Such a contingency is not far-fetched. In a case in Cochin in the State of Kerala a plaintiff was denied a decree merely because in the opinion of the nyaya panchayat his character and antecedents did not entitle him to a decree. For like reasons a nyaya panchayat may feel that whenever a notorious character in the village is accused of an offence, he does not require a trial but can straightaway be adjudged guilty

because of his character, forgetting that any person (irrespective of his character) who is accused of an offence must be deemed to be innocent until he is proved by the evidence in the case to be guilty. Precautions are therefore necessary in order to keep you in the judicial path and it is from this point of view that certain simple rules of procedure are prescribed which you have necessarily to follow. Therefore, whenever a suit or complaint is registered against any person, the first thing that your law will tell you to do is to have the person against whom the claim or accusation is made informed of the claim or accusation, as the case may be, and to give that person a reasonable opportunity of presenting his version of the case before any decision is arrived at. You must remember that every case may have two sides. Your own ideas or impressions of the plaintiff or complainant or the person against whom any claim or accusation is made are totally irrelevant in the decision of the case. When a villager comes before you as a party to a case you have to approach the whole matter with a detached mind; you can have no preconceived notions about it; you must come to your decision objectively on the facts which you must try your best to ascertain. For this purpose, the first essential thing to do is to see what the other party has to say in the matter.

2.2. Thus, as soon as a suit or complaint is registered as mentioned in the preceding chapter, a written summons or notice will issue to the opposite party asking him to attend and produce his defence at the time, place and day fixed for the purpose. This step is not an empty formality but one of great significance.

Necessity for notice

3.1. In the case of every suit or complaint, several defences can be imagined. In the illustration of the civil case given in the preceding chapter, to the claim for purchase price in respect of hay sold, 'B' may say that he did not make any such purchase or that he has paid the whole or a part of the purchase price or that 'A' owes him some money and the hay was given to him in satisfaction thereof and so on. Similarly, in the illustration of the criminal case given in that chapter, 'B' may deny the fact of assault or claim that he was not in that place at all or that there was provocation or that he has been wrongly implicated out of enmity and so on. Therefore, it is of the utmost importance that every opportunity

is given to the other party to meet the case of the plaintiff or complainant.

Substituted service

3.2. In this connection, one word of warning is necessary. It is essential that the rules regarding service of summonses or notices are strictly followed and every attempt is made to have it actually served on the opposite party. The rules will always insist on personal service at the beginning. Substituted service should only be allowed where you are satisfied that personal service is not possible because the other party is keeping himself out of the way or is evading service etc. Such substituted service permitted by the rules may, among other modes, be by service on an adult member of the family or by post or by beat of drum.[1] Very often, you will find that substituted service is asked for by a plaintiff who has really no case against the defendant but merely wishes to harass him by getting a decision behind his back. Therefore, in granting any request for substituted service, you must be fully satisfied that personal service is not possible.

Notice in criminal proceedings

4. In a criminal case, one has to be even more vigilant to see that the rules on the subject are properly complied with. A criminal proceeding affects the liberty of the subject and the law does not favour any proceeding without due and proper notice to the accused.[2] Your law is therefore unlikely to contain any provision for substituted service in the case of a criminal proceeding or for proceeding with it in the absence of the accused. If the accused fails to appear, provision may be found in your law for his production with the help of a regular court of law which will issue a warrant for his arrest and production before you on your application to that court.

Ex parte proceedings

5. From the above discussion, it should be clear that you should avoid passing orders *ex parte* unless the circumstances are such that you have no other option. You will notice that provision

[1]*Marwa Manghani* v. *Sanghram Sampat*, A.I.R. 1960, Pun. 35; *Sant Prasad* v. *State*, (1952) Cr. L.J. 1273. A.I.R. 1952 All. 785; *Shyamnandan* v. *The State*, I.L.R. 33, Pat. 560.

[2]*Dasaundhi* v. *State of Punjab*, I.L.R. (1960) 2 Pun. 772.

is generally made in the rules for setting aside *ex parte* orders where the other party is able to show that his absence from the nyaya panchayat on the due date was for want of notice or for some other cause sufficient to excuse his absence. The law does not favour *ex parte* orders for good reasons and therefore it is of primary importance that every effort is made to ensure that service is effected on the opposite party in such a way that he is made aware of the proceedings against him.

Always hear the other side

6.1. The rule regarding the issue of summonses or notices enshrines one of the cardinal principles of natural justice applicable to all judicial proceedings, namely, that the court, before coming to a decision against and to the prejudice of any party to a dispute, must hear and consider all that he has to say on the subject. A party to a proceeding is *prima facie* entitled to have it heard in his presence. He is entitled to dispute his opponent's case and cross-examine him and his witnesses. He is entitled to call his own witnesses and give his own evidence before the court. This is a right which cannot be denied to him, and how can he exercise this right unless he is made aware of the proceedings against him ? One of the criticisms made against nyaya panchayats is that as all the persons constituting them are laymen they may do things contrary to natural justice.[1] You should therefore constantly keep in mind this cardinal principle of natural justice, namely, "hear the other side" whenever a claim or accusation is made by one person against another.

6.2. Not only must you give the opposite party an opportunity for presenting his case, but the opportunity given must be reasonable. There has been a case where a bench of a nyaya panchayat disposed of a criminal complaint within twelve hours of the lodging thereof, contrary to the rules on the subject. It had all the appearance of a hasty disposal and the order passed had to be set aside as it was obvious that the accused could not have had an adequate opportunity to place his case before the bench.[2] What is a reasonable opportunity will depend upon the facts of each case,

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[1]*Satyanarayan Sah* v. *Bishwanath Sah,* A.I.R. 1956, Pat. 550, 554.
[2]*Kameshwar Singh* v. *Bansropan Chowdhary.* (1961) B.L.J.R. 65.

but if you follow the rules regarding service of summonses or notices carefully and fix the time for the appearance of the opposite party accordingly, that will ensure automatically the grant of adequate opportunity, and no case could then be open to the criticism that it has been disposed of with the same indecent haste as was shown in the case above referred to.

CHAPTER VI

DO NOT BE A JUDGE IN YOUR OWN CAUSE

Principle underlying disqualification by reason of personal interest

1. You may be told that if you are directly and personally interested in any suit or criminal proceeding you are disqualified from trying the case. In fact, your law may contain an express provision to this effect. The principle underlying this prohibition rests upon a thing higher than the technicalities of law. It rests upon the philosophy that human beings are after all human beings and with all honour due to the honesty and integrity of judges, they are not to hear cases in which they are themselves concerned;[1] that is to say, they should not be judges in their own causes. As a judge it is your duty to be impartial. In every case you are called upon to decide you have to come to your decision only on the basis of the materials placed before you by either party without being influenced in any way by extraneous considerations. This is hardly possible if you are closely connected with the parties or have a direct and personal interest in the subject-matter of the proceeding. If after realising that you have such a connection or interest you deliberately continue to function as a nyaya panch in relation to the proceeding, you will not only be acting falsely to your oath but will be doing a positive disservice to the community, and in due course their faith in you and the institution which you represent may well be shaken.

Application of principle to nyaya panchayats

2.1. The application of the above principle in the case of a tribunal like the nyaya panchayat may present some difficulties. Because of their close association with the village, nyaya panchas are likely to be intimately acquainted with their fellow villagers and in addition, would generally be aware of every little affair of

[1] *Q.E.* v. *Pohpi,* I.L.R. 13 All. 171.

any consequence taking place in the village, through gossip, hearsay or in some other manner. Again, it is this nearness or intimacy that has justified the creation of the tribunal to a not inconsiderable extent. In fact, in the case of a nyaya panchayat for a group of villages, which is the usual pattern, the law is likely to have gone further and expressly provided for the active participation in the bench of at least one member from the village in which each party to a proceeding before it ordinarily resides.

2.2. In the above circumstances you may well ask what is the "direct and personal interest" which will disqualify a person from sitting on a nyaya panchayat. Perhaps the answer could best be furnished by a series of illustrations. Suppose in the suit for the price of hay sold earlier referred to, you happen to be a close relation of either of the parties, or the plaintiff is indebted to you and you are interested in the fruits of the decree or the facts of the case are fully known to you. Human nature being what it is, would it be possible for you to keep an open mind on the transaction and come to a decision without any bias, prejudice or preconceived notions? Or assume that in the case of assault, mischief etc. earlier referred to, you were actually a witness of the occurrence. Would it not strike you immediately that you are least fitted to sit in judgment over the case? As you have been an eye witness of the occurrence, your mind must necessarily have been made up. If so, what is the point in your associating yourself with the tribunal which is to try the matter? Would it not be far better if you were to confine yourself to giving evidence as a witness as regards the occurrence?[1] Similarly, where after giving evidence in favour of a person who has come before you with a complaint that his cow has been stolen, you sit as a panch along with others to decide the matter, do you think that the accused will feel satisfied that he is having a fair trial? Not only would your mind have been made up in favour of the complaint in advance but your evidence may well influence the decision of the other panchas.[2]

[1] *Achhar Singh and another* v. *Dasondha Singh*, A.I.R. (1947) Lah. 238; *Umesh Chandra Mandal* v. *Madhusudan Mandal*, 1957 P.L.R. 476; *Lalji Singh* v. *State of Bihar*, A.I.R. 1953 Pat. 77; *Hanoot* v. *District Judge, Pali*; I.L.R. (1960) 10 Raj. 325.

[2] *Motilal* v. *State*, A.I.R. 1952 All. 963.

2.3. Or let us assume that there is a complaint against you that you have wrongfully cut some trees belonging to the complainant and you happen to be a panch. Is it right for you to try the case? Your conscience will tell you that you are most ill-fitted for the purpose.[1] Yet again, imagine a case where you have set the criminal law in motion, that is to say, you are either the complainant or you are vitally interested in securing the conviction of the accused and have taken active steps to get the prosecution initiated. Were you to sit as a panch in the trial of criminal proceeding, you can easily guess what your decision will be.[2]

2.4. It is not necessary to multiply such instances. The principle underlying this prohibition is clear. Apart from eliminating all possibilities of bias in favour of or against one party or the other, one important object underlying this rule is to clear away everything which might engender suspicion and distrust of the tribunal and to provide confidence and trust in the administration of justice. If the working of your tribunal is to be satisfactory, it is essential that the impression should be created as widely as possible that justice can be had from it and no one should feel that decisions which are given might possibly be due to bias or prejudice. Justice must not only be done but also manifestly and undoubtedly be seen to be done.

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[1]*Ramjag Singh* v. *State of Bihar,* A.I.R. 1958 Pat. 7.

[2]*Somar* v. *Gram Panchayat,* I.L.R. 34 Pat. 50. In *Nyaya Panchayat, Palog* v. *Ghanu Ram,* A.I.R. (1964) Him. Pr. 2, it has even been suggested that to allow a nyaya panchayat to punish under section 174, Indian Penal Code, a person for his failure to appear in response to a summons issued by it would be to make the nyaya panchayat a judge in its own cause. Without going into the merits of this decision, one may refer to it for the purpose of emphasising the great importance attached to this principle by the ordinary courts of law.

In this connection reference may also be made to another decision which incidentally illustrates the danger in vesting executive panchayats with power to punish persons failing to comply with their own orders. An executive panchayat fined a person rupees thirty-one for his failure to comply with its notice for the removal of some bamboo clumps. In doing so, the panchayat appears to have felt that no trial for the purpose was necessary. When the matter was taken before a court of law, it was observed that before any conclusion leading to the imposition of punishment on a person can be arrived at, it is necessary that there should be a trial. Any authority which is vested with criminal jurisdiction is necessarily burdened with the obligation, which will be implied, if not expressly provided for, as it is fundamental in character, of observing the basic principles of a trial before arriving at a conclusion for the imposition of a penalty. *Ambika Lal Das* v. *Abhinandan Prasad Roy and others,* A.I.R. 1964 Pat. 90.

Interpretation of the expression 'directly and personally interested'.

3.1. Having regard to the objects underlying it, the superior courts are likely to give the expression 'directly and personally interested' a liberal interpretation, and if, by reason of financial or pecuniary interest or interest based on relationship or interest which is born of personal knowledge or other similar interest there is the slightest suspicion that your decision would not have been honestly come by, your decision is likely to be upset by the superior courts. Therefore, whenever by reason of any interest either in the parties or in the subject-matter of a proceeding you feel that it would not be possible for you to adjudicate upon the matter fairly, you should step down.

3.2. At the same time it is not any and every interest, however indirect or remote it may be, that requires you to abandon your task. If the words were extended beyond their lawful confines one of the main objects for which nyaya panchayats have been set up would be defeated. The statute itself, as I said before, will generally have provided for the inclusion in the bench of one or two panchas hailing from the same villages as the parties to the proceeding. Belonging to the same village cannot, therefore, disqualify any one on the ground of personal interest. Again, as a member of the village community some information or the other about every affair of consequence happening in the village is bound to have reached your ears. This does not mean that you have become a witness or that you have in any way disqualified yourself. In fact, the knowledge in your possession might be useful in eliciting the true facts of a case by questions and answers. You may also make such knowledge available on both sides so that the parties have a full opportunity of considering and leading evidence on it. Whenever you have to decide whether you are directly and personally interested in a proceeding within the meaning of the law, you can safely depend upon your conscience to give you the right answer. You should not attempt to disqualify yourself on the ground of personal interest merely because you wish to shirk your responsibility or because you do not wish to try a particular case.

3.3. The personal interest to act as a disqualification must be of a substantial nature. It should be direct, not indirect and it

should be personal. As a villager you are interested in every affair of the village of any importance. If this fact alone were to disqualify you, there may be no one in the village competent to try any case. This is not what the law intends. What the law intends to convey to you is that whenever you feel honestly convinced that, in view of the interest you have in any particular party due to relationship by blood or contractual relationship (*e.g.*, partnership, relationship of employer-employee, etc.) or in view of your pecuniary or other personal interest in the subject-matter of any proceeding, you feel that you cannot try the case impartially or that the other party is bound to have reasonable apprehensions as to your capacity to deal with the matter impartially, you should see that the bench appointed to try the case does not include you. But there may be cases where you may feel that the interest you have is not such as to disqualify you and yet one of the parties thereto objects to your presence. If such a contingency arises, you need not automatically step down if you are satisfied that the objection is not well founded. At the same time it would be advisable for you to have the objection and a brief statement of the reasons why you have chosen not to accept the objection recorded for the information, in particular, of the superior courts, if your records are called for. Even where no such objection is raised in any case where you feel that you have an interest but it is not of such a character as to disqualify you, you may at the outset take the parties into your confidence by informing them of the interest and, if you do so, it is quite likely that far from raising any objection to your taking part in the decision of the case, the parties readily agree thereto.

Chapter VII

KEEP WITHIN YOUR JURISDICTION

Introductory

1. One of the objects for the establishment of nyaya panchayats is that the many small disputes or petty offences which often disturb the harmony of village life should, in the interests of the village community, be disposed of expeditiously and cheaply by a local tribunal of the villagers' own choice. You will appreciate that such a tribunal cannot possibly have the necessary equipment to deal with complicated questions of law or fact. The law therefore confines your civil and criminal jurisdiction within a small and well defined compass.

Civil jurisdiction

2. On the civil side, in order to determine your jurisdiction regard should generally be had to the following considerations.

Nature of suits

3.1. First, what is the nature of the suit? In an earlier chapter[1] I have referred to the types of cases which would ordinarily be within your jurisdiction and have given you a few illustrations thereof. Such suits would be for the recovery of movable property, that is to say, property other than immovable property like land, rights in or over land (*e.g.*, a right of way over some one else's land), buildings, machinery permanently attached to the earth, standing trees; or for the value of any movable property; or they may be for compensation for wrongfully taking away or injuring some movable property, as where a cow belonging to one villager is wrongfully taken away by another and impounded, or for compensation for damage to crops belonging to one villager by the cattle of another villager trespassing on his land. But the bulk of the suits would be suits for money due on contracts illustrations of which have already been given.[2]

[1]See Chapter III, paragraph 2.
[2]See Chapter III, paragraph 2.1(a).

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3.2. Even in relation to the above categories of suits within your cognizance certain exceptions are likely to be made by your law because of the likelihood of complicated questions of law or facts arising therefrom. Take the case of suits for money due on contracts. These will include suits based on mortgages, that is to say, loans where the repayment is secured by the transfer of interest in some immovable property belonging to the borrower, and in such suits the relief may be for the sale of the mortgaged property or for its foreclosure by the lender or for its redemption by the borrower and so on. Such suits often involve complicated questions relating to immovable property and will ordinarily be outside your jurisdiction. Again, suits for money due on partnership accounts, although suits for money based on contracts, will also be outside your purview because they may give rise to difficulties in the examination and settlement of accounts. Your law may also say that suits for shares in the properties of persons dying without making a will or for legacies are outside your jurisdiction for the simple reason that they generally involve complicated questions of succession, inheritance, etc. You should therefore take particular care to see that the nature of the suit is such that it is within your jurisdiction. This should not prove difficult on a simple examination of the plaint.

Parties to suits

4. Secondly, who are the persons suing or being sued ? If the persons by or against whom the suits are filed happen to be minors (that is to say, below 18 years of age) or are mentally deficient, the law is likely to say that the suits are outside your jurisdiction. Such persons require special protection in the shape of other persons to look after their interests and the suits may also not be simple in character. Suits by or against Government or a public servant acting in his official capacity will also be outside your jurisdiction as such suits are likely to give rise to complicated questions or deserve to be tried by the higher courts in the public interest.

Value of suits

5.1. Thirdly, what is the value of the suit ? Where a suit involves the payment of money, your law will tell you that if it exceeds a certain amount (this is likely to be Rs. 250) you will

have no jurisdiction. Similarly, if the value of the movable property to be recovered or the damage or compensation claimed exceeds that figure, you will have no jurisdiction. A plaintiff may sometimes voluntarily give up a portion of his claim in order to bring a matter within your jurisdiction. This means that he is prepared to relinquish all his claims to the portion so given up. There is nothing wrong in his doing so and there would be no objection to your trying the suit in such circumstances. You cannot, however, allow a claim arising out of the same transaction to be split up into several separate claims merely to give yourself jurisdiction, as where a plaintiff seeks to sue each of three or four persons separately for money due on an article sold to them jointly for a sum which is beyond your jurisdiction, solely for the purpose of getting the matter tried by you.

5.2. Your law may also provide for the disposal of cases beyond the pecuniary limit if both parties agree to bring them before you and to abide by your decision. The value of such suits is also likely to be limited, say to Rs. 500 or Rs. 1,000. Even so, such cases are not likely to be of frequent occurrence in villages, and moreover when the amounts involved are large the parties may prefer to go to the ordinary courts for a fuller trial. Where, however, such an agreement is alleged, you would be well advised to see that it is expressed in writing and filed in the proceedings.

Place of suing

6. Fourthly, have you territorial jurisdiction? The nyaya panchayat in which you are serving can exercise jurisdiction only over the circle for which it is established. Therefore you will have to see whether in respect of a particular case you have territorial jurisdiction. Your task will be considerably simplified if the law contents itself by saying that to give you jurisdiction under this head the defendant must reside or carry on business or personally work for gain within the circle. Such a provision does not require any explanation. But the law may sometimes go further and say that if the cause of action, whether wholly or in part, has arisen within the circle you may also exercise jurisdiction. 'Cause of action' is a technical expression which means every fact which is necessary to be proved to entitle the plaintiff to a decree. By looking at the plaint which would invariably have given you all the facts of the case it should not be difficult for you to deduce the cause of action. For instance, in a simple suit for the return of

a loan, it would be the making of the loan and the failure to return the loan as promised; in a suit for the price of an article sold, it would be the sale or purchase of the article and the failure to pay the price thereof. In all such cases, if the transaction took place within your circle, or the money is payable within your circle, you may exercise jurisdiction. As stated before, your Act may not base jurisdiction on cause of action because, apart from the technicalities involved in the understanding of that expression, in the event of the defendant being outside the circle, any decree which the plaintiff may obtain may be difficult to execute.

Criminal jurisdiction generally

7. Let us now pass on to your criminal jurisdiction. The offences triable by you would be set out clearly in the Act under which you function. A conviction for an offence involves the liberty of the subject and is a very serious matter. Consequently, the offences within your cognizance will generally be of a minor character and your power of punishment is likely to be confined to the imposition of small fines, say up to Rs. 100. It is in the fitness of things that it should be so because a nyaya panchayat is not a substitute for the police or the executive or the regular courts for the maintenance of law and order. It is there for getting small quarrels and differences composed in the interests of peace and amity in village life. Further, if higher powers are conferred, they may not be exercised by the nyaya panchayats at all out of fear or out of a desire to avoid unpleasant consequences.

Nature and ingredients of offences triable

8.1. In criminal cases, it is essential that you understand the ingredients of every offence within your cognizance. The fact that you are all laymen and the procedure you are required to follow is very simple does not absolve you from your responsibility to see that the essential elements of an offence are present before you convict any person.[1] In one case, a panchayat which felt offended at the failure of a person to pay taxes found him guilty of the offence of public nuisance (section 290, Indian Penal Code) and sentenced him accordingly. This is obviously wrong because non-payment of taxes, however reprehensible the conduct may be,

[1]*Kalipada Das* v. *Sm. Kiron Bala Dassi,* (1958) Cr. L.J. 572.

cannot necessarily cause injury, danger or annoyance to the public.[1] Instances of panchayats not being able to distinguish between offences against human beings and offences in regard to animals, of panchayats awarding punishment to animals because the owners had been found guilty of some offence or the other and of panchayats awarding sentences for 'defamation' of cattle have also come to light.

8.2. Although the list of offences triable by a nyaya panchayat may appear long, it will not include any serious offences. In this connection, I may refer to a few of the more important offences in order to explain to you their ingredients. When two or more persons fight in a public place and thereby cause a disturbance to the peace of the village they are said to commit an affray within the meaning of section 160 of the Indian Penal Code. Such a case would be triable by you. If a person fouls the water of a public spring or tank used in the village, say, for drinking purposes so as to make it less fit for the said purposes, he would be punishable under section 277 of the Indian Penal Code and the offence would be one triable by you. Similarly, if a person were to pollute the atmosphere of the village so as to affect the health of the persons living therein he would be rendering himself liable under section 278 of the Indian Penal Code, another offence triable by you. Where 'A', a villager, stops 'B', another villager, from proceeding over a path or road over which 'B' has a right to pass and 'A' knows that he has no right to stop 'B', 'A' would be guilty of wrongfully restraining 'B' within the meaning of section 341 of the Indian Penal Code, another offence triable by you. A large number of cases which come before you may, however, be cases of theft or of receiving stolen property. Section 378 of the Indian Penal Code defines 'theft' and gives several illustrations thereof and if you study these carefully, you should be in a position to understand its ingredients. In order to constitute the offence of theft, the property in question must be movable, the intention of the accused must be to take it dishonestly out of the possession of the owner and without his consent, and the property must be moved in order to such taking. Where a person is charged with receiving or retaining stolen property, he must have dishonestly received or retained it knowing or having reason to

[1] *Shiv Narain Lal* v. *A. N. Rastogi*, A.I.R. (1964) All. 26.

believe that the property is stolen property. The punishment for both these offences is rightly high, but as your powers would ordinarily be limited to the imposition of fines, the law generally limits your jurisdiction to cases where the value of the property stolen or the value of the property recovered from the person who is charged with receiving stolen property[1] does not exceed a certain figure, generally Rs. 50.

8.3. Offences under some special enactments like the Prevention of Cruelty to Animals Act, 1960, the Primary Education Act, the Vaccination Act and so on may also be triable by you. Therefore, it is essential that you have a clear picture as to the nature and extent of your criminal jurisdiction.

Determination of jurisdiction

9. For the purpose of determining your jurisdiction, you should first see whether the offence alleged is included in the list of offences mentioned in your law as triable by you. Secondly, you should ascertain whether the offence has been committed within your circle as otherwise you will have no territorial jurisdiction to try it. All this should not be difficult because by looking at the allegations in the complaint[2] you should be able to determine whether you have jurisdiction to try the case. The truth or otherwise of the allegations in the complaint does not matter at this stage. You will be inquiring into them subsequently. If, however, the allegations on the face of them appear to have been made solely with a view to bringing the matter within your cognizance when it is outside your jurisdiction, you cannot, of course, shut your eyes to it. You must always remember that if you went beyond your powers and assumed jurisdiction where you had none, your decision would be a nullity.[3] For instance, if you attempted to exercise jurisdiction in a case of cheating (section 420, Indian Penal Code, when it is an offence not included in the list of offences triable by you) by treating it as an offence of criminal misappropriation (section 403, Indian Penal Code, when

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[1]*Chhedi* v. *The State,* A.I.R. (1953) All. 752; *Budhya Singh* v. *State,* A.I.R. (1954) All. 131.

[2]*Prayag Pasi and another* v. *State,* A.I.R. (1958) Pat. 585; *Bhagwana and others* v. *State of U.P.,* A.I.R. (1953) All. 367.

[3]*Shaukat Ali* v. *The State,* A.I.R. (1954) Pat. 194.

it is an offence listed as so triable), the superior court will set aside your decision as without jurisdiction.[1]

Abetments and attempts

10.1. Your jurisdiction may also extend to the trial of persons who abet, or attempt to commit, any of the offences listed in your law as triable by you. Such persons would be liable to punishment whether the offence which they have abetted or attempted to commit has actually been committed or not.

10.2. A person may abet the commission of an offence by instigating another to do it. For instance, where 'A', intending to cause a theft to be committed, instigates 'B' to take property belonging to 'C' out of his possession, 'A' would be guilty of abetment. A person may also abet the commission of an offence by intentionally aiding another to do it.[2]

10.3. In the case of an attempt to commit an offence, some thing will have to be done towards the commission of the offence although the actual offence may not have been committed, as where a person attempts to pick the pocket of another by thrusting his hand into his pocket but finds that there is nothing in the pocket. He would be guilty of an attempt to commit a theft although nothing has been stolen.

Exclusive and concurrent jurisdictions

11. As regards the cases triable by you, the law will probably say that your jurisdiction is exclusive. This means that nyaya panchayats alone are competent to try such cases and the regular courts have no jurisdiction in respect thereof. If any such cases are instituted before a regular court, that court would return them to be filed before the nyaya panchayat. If, on the other hand, the jurisdiction is said to be concurrent, what is meant is that it is open to the party seeking relief or redress to go either before the nyaya panchayat or before a regular court, that is to say, he is at liberty to choose his own forum for trial.

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[1] *Brij Narain* v. *Ram Dayal*, A.I.R. (1954) All. 8.

[2] Where a number of persons with a common intention commit criminal trespass, it is not a case of abetment. *Patel Chhagan Raghav* v. *Bharwad Pola Ghugha*, (1963) 2 Cr. L.J. 86.

Transfer of cases

12. The law recognises that even within your limited spheres, cases may arise which, by reason of the complexity of the issues involved, may require transfer to the regular courts. In criminal cases a further ground for such transfer may be the inadequacy of the punishment you are competent to inflict in a given case. A provision may therefore be found in your law for the transfer of any such case to the ordinary courts for trial at your own instance or at the instance of a party to the proceeding.

Conclusion

13. It is essential that you know the extent of your jurisdiction and do not overstep it. For, if you do, not only will your decisions be invalid but you will be justifying the criticisms sometimes levelled against you that you are unable to appreciate your limitations, that you are inclined to extend your jurisdiction in order to increase your importance and so on. You should also remember that if by law you have no jurisdiction to try a suit or other proceeding, it will be of no avail to say that the parties consented to have it tried by you because consent cannot give you jurisdiction where you have none.[1]

[1]*Jaleshar Panday* v. *Lagan Panday,* A.I.R. (1958) Pat. 105.

provisions. It may be that the law contains a provision making it obligatory for every dispute before you to be subjected to a process of conciliation before steps are taken to adjudicate upon it. For instance, the law may say that you must take all such lawful steps as you may think fit for the purpose of bringing about an amicable settlement of every dispute before you and that you should take up the hearing or trial of the case only where you have not succeeded in bringing about a settlement. In such a case, you should not start to adjudicate upon the dispute without first endeavouring to bring about a settlement. Otherwise your decision may be held to be invalid.[1] Alternatively, while retaining the obligatory nature of this first step, the law may provide for the constitution of a special agency for the purpose. The special agency may be a body chosen by the parties or by the Sarpanch or it may be the gram panchayat or it may be some other special body constituted under the law. Where such a provision exists, you must take care to see that the proceedings are taken up for adjudication only after that special agency has reported failure in its efforts to get the matter compromised.

2.2. On the other hand, your law may very well content itself with a provision in general terms that your duty in respect of all cases is to make every endeavour in the first instance to get them settled amicably. The law or the rules made thereunder may give you guidance as to how this recommendatory provision may be implemented. For instance, it may be provided that the endeavour to get the matter compromised may be made by the nyaya panchayat itself or that the nyaya panchayat may invoke the assistance of one or more persons nominated by it in consultation with the parties or by the parties themselves. If the statutory provision relating to compromises were to be in such general terms as stated in this paragraph, you will have sufficient flexibility in the performance of your functions. It may be that in a given case the compromise can best be brought about by your own efforts. In other cases, the intervention of other elders whom you or the parties may choose for the purpose may be of assistance.

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[1] *Gopi Malah* v. *Mt. Birni* (1954) Cr. L.J. 489; A.I.R. 1954 Pat. 195; *Nivas Singh* v. *Amar Sao,* A.I.R. 1953 Pat. 188.

The circumstances of each case should indicate to you what is the best course to adopt.

Your role in bringing about compromises

3.1. Whatever the procedure for compromises may be, you must understand your role in this context clearly. It is in the interests of the parties and of the village community that all disputes are settled peacefully. You have the necessary moral and judicial authority for the purpose which should be cautiously and judiciously exercised. Compromises are not to be brought about by threat, intimidation, or by a show of authority or force; nor are they to be regarded as opportunities for shirking decisions. The parties must understand that you are ever ready and willing to decide disputes fairly and impartially. At the same time you are prepared to lend your good offices to effect settlements wherever possible. In trying to effect compromises you should not be over-bearing in your attitude or brow-beat the parties into submission. It is your judicial authority, character and prestige and your capacity for gentle persuasion that should enable you to bring about the desired results. Where, notwithstanding your best intentions or efforts, a settlement is not arrived at you should not harbour any prejudice or ill-will against either party. At the stage of effecting compromises or settlements there can be no question of the dispute having been fully heard or finally decided. No evidence would have been recorded and your mind cannot possibly have been made up at that stage. In the process of trying to understand the differences between the parties, what you are attempting to do is to see whether the differences cannot be composed by the parties themselves to their mutual satisfaction. The parties may, for instance, agree amongst themselves to have the matter disposed of on the basis of a special oath taken by one of them; or they may like a short adjournment to talk matters over; or they may like to enlist the help of a mutual friend to get the matter compromised; or they may have suggestions and counter-suggestions to make before you. Without in any way going into the merits of the case in any great detail, what you would be doing at this stage is to direct all your efforts, in the form of gentle persuasion, hints, suggestions and pieces of advice, to securing a mutually satisfactory agreement between the parties. In this connection it is unnecessary to add that a case may be

settled by the parties at any stage of the proceeding before final decision and the fact that you have not succeeded in securing a compromise in the first instance is no bar to the parties settling the matter later.

3.2. Courts have often been called upon to perform similar functions. In matrimonial causes, in particular, it is a common experience for the courts to function as conciliatory agencies for settling the differences between the two contending spouses. While keeping an open mind on the issues involved, the courts are able, by the weight of their authority, position and prestige, to suggest or bring about a solution acceptable to the parties. The action of the courts in this regard is never misunderstood by the parties and they do not thereby lose their confidence in them. The capacity of the courts to deal with the matter fairly where attempts at compromise end in failure is never doubted by the parties. You must emulate this example. This should not be difficult if in all matters before you, you train yourself to act judicially.

What cases may be settled

4. It is quite likely that all cases which come before you are allowed by law to be settled, whether they be criminal cases or civil cases. On the other hand, in criminal law there are certain offences, like theft, which are not compoundable, and you need not be surprised if your law makes an exception in regard to such offences. Were your law to make such an exception, you should take care to see that in the case of such excepted offences you do not waste your efforts in trying to bring about a settlement in the first instance.[1] Ordinarily you may expect your law to state that all cases, be they civil or criminal, which are within the cognizance of nyaya panchayats, may be compromised irrespective of whether, in the case of offences, they are compoundable or not compoundable, particularly as such a provision is likely to be in the best interests of the village community. In whatever form the provision may be couched, its intention is to draw your attention to the importance and desirability of getting most of the disputes, if not all, settled by conciliation at the village level. At the same time, you must realise that it is not your duty to force compromises down the throats of unwilling parties.

[1]See in this connection *Pati Kumar* v. *Ahiv Kumar*, A.I.R. 1954 Pat. 157; *Lachmi Mahton* v. *Baso Ram*, 1960 Pat. L.R. 168.

CHAPTER IX

OBSERVE THE PRESCRIBED RULES OF PROCEDURE

Rules of procedure generally

1. You have been told over and over again that in the trial of cases coming before you the complicated laws relating to civil and criminal procedure and evidence which apply in the case of the ordinary courts do not apply and it is open to you to follow any lawful method to arrive at the truth thereof. In the other chapters of this book a few instructions have been given as to how you should conduct yourself in the trial of cases in order to secure the confidence of the public in your capacity to act judicially. Yet, for your guidance and to enable you to function on the right lines you will agree that some rules of procedure are necessary as an essential minimum. Many of these rules may be of a mandatory character rendering any action contrary thereto void. These rules of procedure will be found in the local manual and it is of the utmost importance that you understand them clearly and are familiar with them. In this chapter, I propose to make a few general observations on some of the topics relating to procedure which may be dealt with in the Act or the rules made thereunder.

Benches

2.1. A nyaya panchayat will ordinarily be established for a group of villages and, consequently, it may not always be possible for all the nyaya panchas coming from the different villages comprising the nyaya panchayat circle to sit together for the disposal of every case. Hence, you may find that the rules provide for the formation of benches, that is to say, for three or more members of the nyaya panchayat forming themselves into a bench for the trial of specified cases or for the trial of cases in a specified area. As most of you, if not all, are laymen, the law prefers to have cases tried by benches rather than by individual panchas. By sitting in benches opportunities for mutual discussions are provided and at the same time errors are bound to be minimised. Such benches may be formed by the sarpanch or in

such other manner as the rules may provide. Where the sarpanch is a member of the bench, the rules will generally give him the right to preside. In other cases, the bench may be authorised to elect one of their members to preside. You will appreciate that a chairman is necessary for the regulation and conduct of business at meetings of the bench.

2.2. Where a bench consists of a large number of members, say five or more, the rules or the Act itself may further provide for a quorum for hearings.[1] The object of providing for a quorum is to ensure that at every hearing of the case the minimum number of persons forming the quorum is present.

2.3. You should remember that it is a fundamental principle of law that where a body of men is vested with jurisdiction to try cases, all the members constituting the body should hear each case and decide it. If therefore a bench is to consist of five panchas and a decision is given by three panchas who alone have heard the case and decided it, the decision is obviously bad.[2] But where the law makes provision for a quorum as aforesaid, it is a sufficient compliance with the rules if the prescribed quorum is present at every hearing of the case. Even here, a word of advice may be given. It is no doubt true that where a quorum is prescribed, your decisions would be perfectly valid if at every stage of the hearing the prescribed quorum is present, irrespective of whether the panchas present at all such hearings were the same or not. Yet, your endeavour should always be to ensure that the same panchas are present on all the occasions when a case is heard as that alone will produce the most satisfactory results. In such circumstances, the panchas who heard the case and observed the parties and their witnesses would be in a position bench during the hearing of a case of panchas from the same to arrive at their decision in a more satisfactory manner than panchas some of whom have not heard the case but who are enabled to decide the matter merely because of the rule regarding quorum.

2.4. Your law may also provide for the inclusion in every
heard the case and decided it, the decision is obviously bad[2]. But

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[1]See *Sita Ram* v. *Tejram*, (1957) All. L.J. 444; *Panchanan Manna* v. *State of West Bengal*, 59 C.W.N. 89.

[2]*Jiwa Ram* v. *Panchaiti Adalat*, A.I.R. 1952, All. 510.

villages as those to which the parties to the proceeding belong. It is of the utmost importance that the rules as to constitution of benches, quorum and the inclusion of panchas with local knowledge are carefully followed; otherwise your decisions may be set aside.

2.5. In this connection one word of warning may also be uttered. Where a case is to be decided by a bench, it is the bench alone which should decide the case, and no outsider (including the sarpanch where he is not a member of the bench) has any authority to interfere with the trial of the case or influence its decision in any way.[1]

Sittings to be in public

3.1. All your proceedings must be conducted in public. It may not be possible for you, nor may you be required, to sit every day in the week to try cases. Further, cases in villages are not likely to be so many as to require you to sit from day to day. Your work is also honorary. You may therefore sit only on days when you are likely to be free from other work. But the dates on which you propose to sit and the time and place of sitting must always be notified to the parties. Ordinarily a notice to this effect will be affixed to the notice board of your office. Where you have a regular office, your sittings will generally be held there and the villagers are also likely to be familiar with the days and times of sittings, if they are fixed. As nothing should be done behind the backs of parties it is of the utmost importance that the parties to every proceeding are always kept aware of the time and place of sittings with which they are concerned.

3.2. When it is said that you should conduct your proceedings in public, what is meant is that the place where you sit must be accessible to the public so far as accommodation will allow. Your law may, in fact, expressly provide that the place where you sit shall be deemed to be a place to which the public have access so as to leave no room for doubt that the public is entitled to be present at all your trials and watch your proceedings. Even

[1]*Jodhey and others* v. *State*, A.I.R. 1952 All. 788.

if the law does not contain any express provision in this behalf, you must take care to see that your proceedings are always conducted in public. Public sittings serve a great purpose in the advancement of the cause of justice. Apart from ensuring that your proceedings are conducted in a fair, impartial and open manner, it enables any person watching the proceedings to come forward and give evidence whenever he feels that a party or witness before you is not telling the truth. In the context of village judicial institutions the importance of sitting in public cannot be over-emphasised. As people living in villages are a small and closely knit community, even the few opportunities which may be available to persons elsewhere for committing perjury will be completely eliminated if you sit in public. There have been several instances where persons, merely because they have been allowed to watch the proceedings of nyaya panchayats, have spontaneously come forward to give evidence to contradict a witness the moment they found that he was not telling the truth.

3.3. Having fixed a time and place of sitting, you should take care to see that you are punctually present at the appointed place; otherwise serious consequences may follow. Provision is bound to be made in your rules as to the consequences of the non-appearance of either party to a proceeding at the appointed time and place. Where you are not punctual, you cannot expect the parties to wait for your convenience indefinitely; and, when subsequently you do sit to hear the case, you find that one or both the parties is or are absent and proceed to dispose of the matter accordingly, there is no doubt that you would be doing a grievous wrong to the party or parties concerned.

Res judicata or finality of decision

4.1. In the interests of finality of litigation, the Act or your rules may provide that if a matter in dispute before you have already been heard and decided by a court (or even by a nyaya panchayat) in a former proceeding between the same parties, you shall not try the same again. This is not a technical requirement but a requirement based on the principle that a man should not be vexed twice for the same cause. For the application of this rule you will not have to undertake any inquiry on your own. No doubt, if the matter were within your own knowledge,

you may well inquire into the matter, but the point is bound to be raised by the defendant wherever the rule applies because it would be in his interest to do so. Where such a plea is raised, what you have to do, broadly speaking, is to see whether,—

(1) the former case by reason of which the rule is claimed to apply was between the same parties or between parties under whom they or any of them claim, that is to say, their representatives. Illustrating this condition in a negative way, where a suit by one creditor against his debtor has been dismissed, the dismissal cannot bar a suit by another creditor against the same debtor, because the parties are not the same; nor does one creditor represent the other;

(2) the matter now in dispute before you is the same or substantially the same as in the former case; and

(3) the matter has been heard and decided in the former case. For this purpose, it does not matter when the former suit was instituted. It is sufficient if the decision in the other case was given before the trial of your case.

4.2. Your law may go further and provide that even where a case is merely pending in some other court (or a nyaya panchayat) in which the same matter is directly and substantially in issue between the same parties, you should stay your hands. This means that you should adjourn the case before you pending decision in the other case.

Person once convicted or acquitted not to be tried for same offence

5. A somewhat similar rule obtains in criminal law also. A person who has been either convicted or acquitted of an offence cannot be tried again on the same facts or in relation to the same occurrence. This is also a constitutional guarantee given to every person. Article 20(2) of our Constitution says that no person shall be prosecuted and punished for the same offence more than once. For instance, where an accused person has been acquitted of the offence of criminal trespass by a bench of your nyaya panchayat, it is not open to another bench of your nyaya panchayat to convict the person who has been so acquitted on the same

facts pretending that it is for a different offence or to re-open the same matter on the representation of the complainant.[1] If an accused person before you contends that he has already been convicted or acquitted in respect of the offence with which he now stands charged before you by any court, including a nyaya panchayat, you should inquire into the contention to see,—

(1) whether the accused has actually been tried in the other case;

(2) if he has been tried, whether the facts on which the charge has been framed in the other case are the same; and

(3) whether the trial has ended in the acquittal or conviction of the accused.

If the answer to these questions is in the affirmative, you should not try the case again. Apart from its illegality, it is not fair that a person should be tried twice on the same facts and on the same occurrence. Here also the law may go further and provide that even where a case on the same facts is pending in some other court (or a nyaya panchayat), you should stay your hands, and if it says so, you should adjourn the proceeding before you pending decision in the other case.

Limitation

6.1. Another provision for reducing litigation would be with respect to limitation, that is to say, your law may provide that where a claim is preferred or a prosecution is launched after the expiry of a specified period, the proceeding should not be entertained, but should be dismissed. It is the policy of the law to put an end to stale claims or proceedings. Further, undue delay in the institution of proceedings is likely to cause the evidence of facts to disappear. You should understand this branch of the law clearly. In the case of civil suits entertainable by you, your law may contain a general provision that if they are instituted after the expiration of, say, three years from the date on which the right to sue accrued, the suits should be dismissed. Where there is such a provision and a suit for money due, say, on a promissory note, is brought three years after the money became due, you will have to dismiss the suit. Similarly, if a suit for

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[1]*Gopal* v. *Panchayat Adalat,* (1955) All. L.J. 495.

the price of goods sold and delivered is brought after the expiry of three years from the date on which the goods were delivered, you will have to dismiss the suit. On the other hand, instead of making a general provision as stated above, your law may prefer to make the Limitation Act, 1963, applicable to proceedings before you, in which case not only will you have to know the article which applies in the case of each suit brought before you, but also the other provisions contained in that Act by which the period of limitation may get extended in certain circumstances.[1]

6.2. Ordinarily, no rule of limitation applies in criminal cases. But in view of the petty nature of the offences triable by you, your law may well provide that if any criminal proceeding is commenced, say, more than one year after the commission of the offence, it should be dismissed.

6.3. It is therefore necessary that as soon as a proceeding, whether civil or criminal, is instituted before you, you keep your eyes wide open to see whether any rule of limitation applies and if it does to dismiss the proceeding even if the other party has not raised it by way of defence. Ordinarily, you may expect the opposite party to raise such defences because it would be to his advantage to do so. To some extent you may also be able to rely on the secretarial assistance provided to draw your attention to the limitation law applicable.

Oath to accused

7. In criminal cases you should remember that it is for the prosecution to prove its case and that it is not for the accused to prove his innocence. Our Constitution also guarantees to every person accused of an offence the fundamental right that he cannot be *compelled* to give evidence against himself. Hence, your law is likely to say that no person accused of an offence shall be put on oath, and wherever a person is charged with an offence all that is necessary is to have his plea, if any, recorded, without his being put on oath. The reason for such a provision is not hard to seek. If you were to put an accused person on oath and further subject him to cross-examination in the same manner

[1]For a more detailed explanation of the limitation law, see the local nyaya panchayat manual.

as any other party or witness, there is no doubt that he would be considerably prejudiced thereby. In such circumstances not only is the accused likely to be forced to give evidence against himself but there is the further likelihood of the accused not being in a position to know what effect the cross-examination has produced in your mind.[1] The cross-examination may well result in the conviction of the accused on the basis of statements forced out of his mouth. The case is, however, different where the accused person is prepared to give evidence on his own initiative. If he volunteers to give evidence in his defence and is even willing to be put on oath for the purpose, there is nothing to prevent you from receiving the evidence and acting upon it. But in all cases, avoid giving the impression that you have in any way compelled an accused person to give evidence by putting him on oath and subjecting him to cross-examination.

Ex parte trials in criminal cases

8. Another rule of prudence designed for the protection of accused persons and to ensure to them fair trials is that a criminal case should not ordinarily be proceeded with in the absence of the person concerned.[2] Unlike a civil case, irreparable damage may be caused if a criminal case is allowed to proceed *ex parte*, more so, if a nyaya panchayat possesses the power to award sentences of imprisonment. Every precaution should therefore be taken to ensure the presence of the accused at all stages of a criminal proceeding against him. It is possible that your law does not provide for *ex parte* hearings in criminal cases at all. Even if it does, it is quite likely that provision is made for the appearance of the accused at some stage or the other of the proceeding, say, to have his plea recorded or to receive his sentence. Where the law does provide for *ex parte* hearings, you should make yourself doubly sure that all possible steps for the production of the accused have been exhausted before you proceed *ex parte*, because criminal proceedings affect the liberty

[1]*Pati and others* v. *Dubri and another*, A.I.R. 1943 All. 144. See also *Pearey* v. *State*, (1955) All. L.J. 328.

[2]See *Dasaundhi* v. *State of Punjab*, I.L.R. (1960) 2 Punj. 772. You cannot ask an accused person to produce before you a co-accused. *Venkatachala Naicker* v. *The Panchayat Board, Ethapur*, (1952) M.L.J.R 776.

of the subject, and no proceeding should ordinarily be taken in the absence of the accused. As stated before, it is more likely that the law does not provide for *ex parte* hearings at all, and to meet cases where the accused refuses to appear in answer to your summons, provision is made for compelling the appearance of the accused with the help of the ordinary court.

Judgments to be signed and delivered

9. Rules may also be made with respect to the signing of judgments and their delivery. If there are any such rules, they must be clearly understood and followed. Where, for example, a rule says that judgments must be signed by all the panchas present, it will not do if the judgment is signed by only some of them.[1] In such an event, it may lead to the inference that the panchas who have not signed the judgment are perhaps of a different view, and, if that be the case, their refraining from signing the judgment would undoubtedly cause prejudice to the parties. You cannot say that you will remain neutral and not sign the judgment. You should not also hold up the decision in a case by refusing to sign the judgment.[2] It is your duty to decide all disputes coming before you one way or the other and it is for this purpose that you have been chosen. You cannot shirk your responsibility in this respect. It is no doubt open to the members of a bench to express differing views and the rule will say what happens in such circumstances. Ordinarily, the view of the majority will prevail.[3] Whenever you agree with the decision of the bench you should affix your signature thereto, if the rule so requires; and where you disagree, you may say you disagree, but it is neither correct nor proper for you to remain neutral or to merely refuse to sign the judgment without explaining your stand.

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[1]*Sita Ram* v. *State*, I.L.R. 35 Pat. 628.

[2]*Maharaja Dhiraj of Darbhanga* v. *Bharat Koeri and another*, 1952 All. L.J. 724.

[3]*Harbans Singh and others* v. *Sita Devi and others*, A.I.R. 1958, Pat. 113.

CHAPTER X

OBSERVE CERTAIN PRECAUTIONS AS BASED ON PRUDENCE

General

1. You have been quite rightly freed from the necessary of having to understand the complicated provisions contained in the two Codes of Civil and Criminal Procedure and the Evidence Act which apply in the case of the ordinary courts. Yet, as has been emphasised several times in the earlier chapters, however informal and unconventional your proceedings may be, you have to act judicially in the discharge of your duties—duties which involve the adjudication of disputes between two parties. You have already been told that you must give the parties an opportunity of being heard and stating their case and views before you. You must act honestly and impartially and not under the dictates of some other person to whom authority is not given by law. Yours is a position of trust and there must be no allegation of corrupt behaviour of any kind against you. All these principles of natural justice have been elaborated in the other chapters of this book. If you follow the rules prescribed for your observance in the trial of cases you will ordinarily have complied with the broad principles of natural justice as the rules are really intended to give effect to them. In this connection, I would like to refer to a few general topics in order to indicate what precautions may be taken by you in order to ensure fair trials. These precautions are based on experience.

Proof of facts

2. As a rule, all facts in issue in a proceeding have to be proved, and proof of a fact is by evidence produced before the court. No particular number of witnesses is required to prove any fact. The evidence of a single witness, if believed, may be sufficient to prove a fact. Evidence can be given by any person provided he is able to understand the questions and to answer them rationally. This means that the evidence of children of very tender age, persons infirm in mind and the like can have no value.

When facts are admitted they do not have to be proved although you may in your discretion like to call for other proof of them.

Evidence how to be given

3. All evidence must be given in open court so that each party has a full opportunity of cross-examining the witnesses of the other party. This will also enable you to form an opinion as to the credibility of a witness by the way he answers questions and by his general demeanour. Evidence must be given on oath, except in the case of accused persons.[1] This is necessary to give the evidence a sanctity which will go home to the parties. There is also the further sanction that if the evidence given is false, the witness can be prosecuted for perjury.

Burden of proof

4.1. Whoever wants you to give a judgment or decision in his favour as to any right or liability depending on the existence of facts which he asserts must prove that those facts exist. Thus, where 'A' sues 'B' for money due for hay sold, he must prove that he sold a certain quantity of hay to 'B' on a certain day and that the price is so much and that it still remains to be paid. Or where 'A' prosecutes 'B' for theft he must prove that 'B' is guilty of the theft.

4.2. If in the civil case aforesaid, the defendant 'B' appears and raises a defence to the suit, it would be for him to prove the defence. Thus, if the defendant says that he has paid for the hay purchased, he will have to prove it. Similarly in the criminal case aforesaid, it would be for the prosecution to prove its case beyond all reasonable doubt, that is to say, the prosecution will have to prove all the necessary ingredients of theft.[2] If the accused has any defence, he will then try to establish it by calling his witnesses. He may say, for instance, that he was not in the village at all when the theft is alleged to have taken place. If he says so, he will have to prove it.

Nature of evidence

5. You are entitled to expect from the parties the best possible evidence which the nature of the case is capable of. The

[1] See in this connection, Chapter IX, paragraph 7.

[2] See in this connection, Chapter VII, paragrah 8.

evidence may be oral or documentary. All facts, except the contents of documents, may be proved by oral evidence. Where a document has to be proved, ordinarily it should be by the production of the document itself, except where it is not possible to do so by reason of the circumstances of the case, as where the document is in the possession of the other party who refuses to produce it.

Secondary or hearsay evidence

6.1. As the Evidence Act does not apply to you, you are not prevented from relying on secondary or hearsay evidence. In a court of law all oral evidence must be direct, that is to say, if the evidence refers to a fact which could be seen, the evidence must be the evidence of a witness who says he saw it. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it and so on. You are, however, not bound by any such restrictions. At the same time you can readily appreciate how unsatisfactory it would be to decide a case merely on the basis of secondary or hearsay evidence—evidence which is likely to be based on gossip, rumour, loose talk etc. The truth of a fact is bound to get depreciated in the process of repetition. Cross-examination of a person who gives evidence on the basis of what he has only heard from another person would be useless because he does not know the facts of the case himself. There would be nothing to show whether he has understood his informant correctly or whether he is correctly repeating him. He may even attribute to his informant statements which the latter has never made. Therefore, as a matter of prudence, you should ordinarily rely on evidence which is direct, and where you are compelled to receive evidence which is not direct, you must satisfy yourself that it is worthy of acceptance and can well be acted upon.

6.2. The danger of acting on hearsay evidence is even greater in a criminal case. In a criminal case, the prosecution has to prove its case. The accused may sit tight and not take any steps to prove his innocence. It is for the complainant to prove his case beyond all reasonable doubt. Conviction for an offence is a very serious matter and, unless there is clear proof of guilt, an accused person should not be convicted whatever your private feelings in the matter may be. You are therefore entitled to

expect the best possible evidence to be given. The evidence may be that of persons who have been witnesses to the occurrence or it may be circumstantial, that is to say, the evidence relating to the circumstances is such that it leaves no doubt in your mind that the accused must have committed the crime. If, after the evidence, you have any doubt as to the guilt of the accused, you should give him the benefit of the doubt and not convict him at all.

Mode of examination of witnesses

7. The examination of a witness consists of three parts :—

Examination in chief,
Cross-examination, and
Re-examination.

The examination in chief is the examination of a witness by the party who calls him. Cross-examination is the examination by the opposite party and re-examination is the examination by the party who calls him after his cross-examination in order to explain any matters referred to in the cross-examination. This order may be followed by you in order to ensure a smooth trial. You may ask any questions of a witness at any stage of a proceeding.

Evidence in ex parte cases

8. A civil case may be heard *ex parte*. That is to say, where, notwithstanding the best efforts of the plaintiff to get the defendant to appear, he does not choose to appear, it is open to you to act upon the evidence produced by the plaintiff to grant him relief, but the evidence must be of such a nature as to show that on the face of it the plaintiff's case is true. Because a case proceeds *ex parte*, it does not mean that the plaintiff has not to prove his case. A criminal case may not ordinarily be heard *ex parte*.[1]

Admissions and confessions

9. A case may be decided on the basis of admissions in civil cases and confessions in criminal cases. Confessing one's guilt is ordinarily against human nature and you may be justified in looking at a confessional statement with suspicion in order to

[1]See in this connection, Chapter IX, paragraph 8.

be sure that it is voluntary and that it is not being made under threat or coercion. But if you are satisfied that it is voluntary, there is nothing to prevent you from acting on that confession and passing sentence on the accused.

Adjournments

10. The law will give you power to adjourn the hearing of a case from time to time whenever it is necessary to do so. Even if the law does not say so, you will have that inherent power. But remember that justice delayed is justice denied. Therefore do not grant unnecessary adjournments. One of the main objects for the establishment of nyaya panchayats is the avoidance of delay which is generally associated with ordinary courts. Your cases are simple, your procedure is equally simple; you are expressly empowered to bring about reconciliations and your decisions, where no compromises are possible, can be arrived at quickly and without much difficulty. In such circumstances, frequent and long adjournments should not be necessary at all.

Chapter XI

ACT ONLY ON THE EVIDENCE BEFORE YOU

Use of personal knowledge

1. In coming to your decision in any case you should remember that you can act only on the evidence properly placed before you and that you may not make use of your personal knowledge. There have been several instances where panchas have been known to use their personal knowledge of the facts of a case in arriving at their decisions. This is fundamentally wrong. In an earlier chapter[1] reference has been made to personal interest which disqualifies a person from sitting as a panch. In that connection, it was pointed out that if you happen to possess information which is not of such a nature as to disqualify you, you will be well advised to make it available to both the parties if it is to be used at all in any proceeding; or that you may use the information for the purpose of eliciting from the parties the facts of a case by questions and answers, the questions and answers alone forming part of the evidence. You must remember that if you keep to yourself any private or secret information that has come into your possession and ultimately act upon it in coming to your decision, the party affected would have been totally denied any opportunity of putting forward his case or of having the information in your possession tested. He would legitimately feel grieved that the decision has been reached behind his back. You must know that he is entitled to know in good time the evidence and arguments he will have to meet, and this will not be possible if you act on any inside or extraneous information.

Secret inquiries

2. Nyaya panchayats very often forget this rule of natural justice and commit grave irregularities. Apart from using their personal knowledge in certain cases, nyaya panchayats have been known to make secret inquiries into the truth or falsity of a

[1]See Chapter VI.

particular complaint and act upon the result of such inquiry.[1] There have been cases where a nyaya panchayat hearing a complaint, say, of hurt, has referred the matter to the sarpanch of another panchayat for inquiry and report.[2] Whether the inquiry is made by a panch or an outsider makes no difference. So long as it is in the nature of a secret inquiry, it is bound to cause irreparable injury to the accused as he would have had no opportunity of rebutting the evidence contained in the report or of cross-examining the person making it.

Local inspections

3. This is, however, different from a local inspection which you may desire to make or a commission which you may like to issue. Subject to any rules which may be made (and these have to be carefully understood and followed), the law leaves it to you to adopt whatever methods you think fit for the ascertainment of the facts of any case. In pursuance of this power you can have recourse to any method which is not unlawful for ascertaining the truth. But in whatever method you adopt, take care to see that you give no cause for complaint to either party that he is prejudiced thereby. This is why secret inquiries behind the backs of the parties are frowned upon by law. In the case of a local inspection, however, the panchayat would be conducting it openly after notice to, and generally in the presence of, the parties. There is nothing wrong in adopting this procedure. The law (including the rules) may not specifically provide for local inspections, or it may contain a bald provisions that you may make local inspections whenever you consider it necessary so to do without any directions as to the manner in which such inspections may be made. Whatever the legal provision may be, a nyaya panchayat should take care to see, whenever it decides to undertake a local inspection, that it is done after due notice to the parties in order to eliminate any complaint by them on this account later. Such local inspections should be done by the panchayats themselves and it would not be correct to associate an outsider with it for the purpose.[3]

[1] *Daulat Ram and others* v. *Panchayat Adalat and others,* A.I.R. 1954. All. 306; *Nando and others* v. *The State,* 1957 Cr. L.J. 247.

[2] *Buchunia* v. *Sub-Divisional Magistrate,* (1961) All. L.J. 248.

[3] *Sant Prasad* v. *The State,* A.I.R. 1952 All. 785.

Commissions

4. Making a local inspection is different from appointing a commissioner for making a local investigation and then treating his report as evidence in the case. But the parties must be made aware of what you propose to do. The commissioner also cannot make a secret inquiry for the purposes of his report. His report should be available to the parties for examination.[1] You may also appoint a commissioner for the examination of any witness or witnesses. A commissioner so appointed can act only after due notice to the parties.

No abdication of functions

5. When you have to try a case, try it yourself and do not abdicate your functions is another rule which you should remember. You can treat whatever material is properly placed before you as evidence in the case; and where evidence in the shape of a report etc. has also been made available to both the parties for examination you can freely act on such evidence in coming to your decision. But you will be abdicating your functions if you happen to leave everything to the determination of some one else and merely endorse his opinion. There has been a case where a sarpanch who, not being a member of the bench trying a case, by reason of his authority, took it upon himself to inquire into the facts of the case with the help of a commissioner appointed by him and got a report prepared under his guidance which was the basis of the decision of the bench.[2] In another case, the bench decided a criminal case on the basis of a letter sent to it by the sarpanch stating that the complaint is true. It is obvious that in all such cases the nyaya panchayat did not perform its functions; it either abdicated them in favour of a sarpanch or merely echoed his decision.

Conclusion

6.1. The fact that the legislature has refrained from applying to you the technical rules of procedure and evidence which bind the ordinary courts of law does not mean that you are free

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[1]*Girja Prasad* v. *Zalim Singh,* A.I.R. 1953 All. 340; *Ganga Ram* v. *Bhabichhan,* A.I.R. 1953 Pat. 340.

[1]*Jodhey and others* v. *State through Ram Sahai,* A.I.R. (1952) All. 788.

to act in any way you like. In a criminal case a certain nyaya panchayat trying an offence under Section 426 of the Indian Penal Code (mischief) came to the conclusion that in the eye of the law the accused was not punishable. This presumably meant that there was no evidence to support his conviction. The panchayat, however, proceeded to observe that its duty was to do justice (implying thereby that justice, as conceived by it, was something different from law) and justice as thus understood by it demanded the conviction of the accused. How is one to understand such a decision? The conviction is bad because the guilt has not been proved. One would therefore be justified in concluding that the conviction was based on some private information or personal knowledge, and, if that were so, the conviction would be doubly bad.

6.2. The object underlying the discussions in this chapter is to impress upon you that every step that you take in the discharge of your duties should bear the stamp that it has been done judicially. You should do nothing behind the backs of the parties to any proceeding. This will be avoided if everything is done after due notice to them. You must act only on the evidence which is properly placed before you, that is to say evidence which is given by, or in the presence of, the parties or which has been made available to them in due time for examination. Your decision must be based on the evidence and should be given by you and not by an outsider or under his behest. In short, every step that you take should be such as to give no room for a feeling in the mind of any party to a proceeding that justice is not being done.

CHAPTER XII

GIVE REASONS FOR YOUR DECISIONS

Necessity for reasons for decisions

1.1. You are laymen not trained in the law; you have your ordinary avocations to pursue which naturally and quite legitimately claim most of your time; you are performing the work of nyaya panchas in an honorary capacity and for the good of the community. It is not therefore fair to expect you to devote as much time and labour in regard to the cases that come before you as an ordinary court of law is expected to do; nor is the law unaware of this position.

1.2. The procedure you are required to follow is therefore a summary one. At the same time, for whatever decisions you arrive at, it is but right that the law should expect you to give reasons, however brief they may be. This is necessary for several reasons. First, by so doing you give proof to the outside world that you have heard and considered the evidence and arguments on both sides and that you have understood the case. Secondly, it will shield you from the charge often made that you are prone to take extraneous matters into account in deciding cases, because your reasons will then have to be based on the evidence given. Thirdly, it will help you in arriving at the correct decision because you will have to reason out your decision on the basis of the evidence. Fourthly, it will enable the courts which have revisional, appellate or other supervisory jurisdiction over you to understand and appreciate your conclusions. Above all, it is bound to give you mental satisfaction that your decisions are honestly come by.

What a decision should contain

2.1. Your Act on this topic may either provide that your decisions must contain the prescribed particulars leaving it to the rules to say what they are or provide that the decisions must briefly contain the reasons therefor. The reasons can be as brief as possible but they must be intelligible. They must not

appear capricious, arbitrary or wanton as they may well be if no reasons at all are given.

2.2. Take for instance the suit for money due for hay supplied referred to earlier in these chapters. Assume that in spite of the best efforts of the plaintiff to get the defendant to appear by service of summons, etc., the defendant does not appear and the case has to proceed *ex parte*. The plaintiff gives evidence and produces his witnesses. There is nothing in the evidence to show that his claim is false. Yet a nyaya panchayat chooses to dismiss the suit by merely recording "Claim not proved. Suit dismissed." In what light will such a judgment be understood by the plaintiff and the outside world? The plaintiff will feel that he has had no justice from you. The outside world will get the impression that you are inclined to act capriciously or arbitrarily and that in arriving at your decision you have perhaps been actuated by some ulterior motive. The revisional court will treat it as a nullity. Take another case. The suit is on a promissory note. The defendant who appears denies that he ever received any money on the note. After hearing both the parties you merely record the following decision—"Suit dismissed". What is one to understand by this decision? Is it because you believed the defendant's evidence in preference to the plaintiff's or was there something else at the back of your mind when you gave the decision? Is there anything to indicate that you applied a judicial mind to the trial of the case?

2.3. In a criminal case it is even more necessary that you should record your reasons, particularly where the case ends in a conviction. To say merely that you find the accused guilty under Section such and such and sentence him to a fine of so many rupees is not to give a proper decision; nor would you be acting with propriety by giving such a decision because the accused and the complainant have a right to expect a fair and intelligent decision from you. It would be equally improper to record a decision which says merely that you unanimously convict the accused. Such a decision does not indicate why that conclusion has been reached and the fact that it is unanimous makes no difference. Again, were you merely to say that you believe the prosecution and so you convict the accused, you

would only be recording a conclusion and not the reasons for the conclusion. Yet again, a judgment would be no judgment if it contains no reference to the occurrence which forms the basis of the charge or to the offence for which the accused is being convicted. In all the above illustrations you would be rendering yourself open to the charge that you have betrayed utter ignorance of the rudimentary principles of justice and fair play.

2.4. In a criminal case, you must take care to state what the offence against the accused is and the reasons why you convict him. The reasons will necessarily be based on the evidence in the case to which you will have to refer, however, briefly it may be. If you try to set out the reasons, apart from anything else, it will enable you to understand the ingredients of the offence, and it will also enable the accused to know why he is being convicted.

2.5. The law may provide for brief reasons being given only when the decision consists of a sentence on the accused and may remain silent as to what should be done when the decision is one of acquittal. If that be the case, it may not be necessary for you to write a judgment where the decision is one of acquittal and the fact that no reasons are given for such an order may not afford a ground for revision. Yet for your own satisfaction and for the benefit of the parties it may be advisable to follow the same practice as in the case of convictions.

Giving reasons a requirement of justice

3. If you pause to consider the requirement that you should give reasons for your decisions, you will readily appreciate that it is not a vexatious requirement but that it has been designed in the interests of everybody, the nyaya panchayat, the parties to the proceeding, the community at large and the revisional court. It is an essential requirement of justice.

Chapter XIII

YOUR RECORDS ARE SACRED DOCUMENTS

Why records are necessary

1. You may feel that the rules prescribed for the maintenance and custody of records are irksome as they mean that you have to maintain a multiplicity of records involving a lot of writing, thereby throwing on you a responsibility much of which you would like to avoid. But if you consider the object underlying the rules, you can easily appreciate how necessary and well designed they are. As a nyaya panchayat, your body is called upon to decide disputes between one person and another, disputes, which involve the rights, liabilities and liberties of persons. In the earlier chapters you have been told what acting judicially means, and litigants and the outside world must know that all your actions have been above board and in the interests of justice. By maintaining a record of what you do, you will be putting an end to all speculations as to whether the rules prescribed have been followed, whether your actions have been in good faith, whether any of them has been contrary to natural justice and so on.

Registers to be maintained

2. As soon as a proceeding is instituted before you, it will require to be registered and numbered. The date of institution would also be important for many purposes, *e.g.*, for determining limitation. The rules may therefore provide for a register of proceedings to be maintained, giving full information as respects the institution of every proceeding and its progress including its decision and execution. There may be many other registers which have also to be maintained, like the cash book showing moneys paid to or by nyaya panchayats, the fine register showing the fines imposed, the register of applications for copies showing applications for copies of decisions etc. made and copies given, and so on.

Case records

3.1. But the most important of all the records you will have to maintain would be the records pertaining to the cases themselves. Every entry that you make in the case record is of the greatest importance to the parties concerned and great care has to be taken to see that the entries are carefully and truthfully made. A great responsibility is thus cast upon you in this regard. While the secretary may be able to assist you in the maintenance of many of the other registers, certain things will have to be done by yourselves. For example, you would be well advised to write from day to day the progress of every proceeding, that is to say, as to what happens on each occasion a proceeding comes before you for hearing. You may also be required to have the evidence of the parties and their witnesses recorded in your own hand in order to ensure that it is recorded correctly and truthfully. You may not be allowed to employ an outsider for the purpose.[1] This may not throw an unreasonable burden on you as all that you have to do is to have a brief memorandum of the evidence recorded.

3.2. A further precaution which you may well take would be to see that the recording is done in such a manner as to leave no space for interpolations. Complaints have often been made that nyaya panchayats are in the habit of interpolating something in order to render some other proceeding infructuous, for example, applications for the cancellation of their jurisdiction or for the transfer of cases made to a higher court. Such complaints may be avoided if the order sheets and other papers are maintained in such a way that the writing thereon is continuous leaving no space for interpolations or additions.

No power to revise etc.

4. Where a decision is signed and delivered, you have no power to revise, alter or cancel it. Only the higher court has such a power. If you try to exercise any such power your action is bound to be misconstrued and your good faith suspected. You may, however, correct clerical errors but even this you should do after notice to the parties concerned pointing out the obvious error which requires to be corrected.

[1]*Shri Purshottam* v. *The State of U.P.* (1955) All. L.J. 195.

Handling of records

5. You should not allow case-records to be handled by any and everybody. The records must be kept under lock and key when not in use. The rules will not allow the records to be taken home by any body, even if he be an official of the nyaya panchayat. Rules will have been made for the inspection of records, for copies being obtained therefrom etc., and you must see that the rules are always carefully observed.

Care and custody of exhibits

6. Documents which may be presented before you by either party as evidence in the case will have to be taken special care of and filed properly as exhibits in the proceedings. Such documents are of great importance to the parties to prove their cases, and may have to be returned to them when the proceedings are over.

Copies of proceedings

7. Where copies of orders or decisions are asked for, do not hesitate to supply them. Any delay may cause irreparable damage to the aggrieved party in prosecuting his further remedies against such orders or decisions, for it may well happen that under the law he is not entitled to exclude the time taken in obtaining copies from the period of limitation prescribed, in which event his remedy in the higher court may get barred. At every stage of a proceeding you must act in such a way as to prove to the outside world that you have no personal interest in the proceeding. If in the matter of furnishing of copies there is any delay, it should be clear from your conduct that the delay is due to causes for which you are not responsible.

Transmission of records to higher courts

8. When a case is called up by a higher court, do not delay in transmitting the record. You have nothing to hide from any person. There is nothing unusual or unnatural in parties dissatisfied with your decisions or orders seeking relief in the higher courts. The fact that a revision application has been filed does not mean that it is a reflection on your capacity to decide a case. Appeals and revisions are a matter of every day occurrence even with respect to the decisions of ordinary courts. Cases have been known where nyaya panchayats have either ante-dated their

judgments or proceeded to dispose of proceedings before them even after it had been brought to their notice that orders transferring those proceedings to some other court had been passed by the higher courts.[1] In the latter case, they had no jurisdiction to do so and in the former the action shows want of good faith. In either case, the action of the nyaya panchayat can be subjected to considerable adverse criticisms. Why should you lay yourself open to such criticisms? As stated before, you have and can have no personal interest in the cases tried by you. Your constant aim should be to bring to bear upon every proceeding before you an objective and a judicial mind. If you do so, you need not be afraid of the higher court. No one is going to take you to task for an error honestly made and in good faith.

[1]*Mardan* v. *Rex*, A.I.R. 1950 All. 478; *Pahla* v. *Makhdoom*, A.I.R. (1952) All. 28. *Ram Singh and others* v. *Durga Prasad and others*, (1955) All L.J. 305.

Chapter XIV

CONCLUSION

Conclusion

1. The talks in the earlier chapters are intended as paving material for the road to justice along which nyaya panchas are expected to travel in the discharge of their duties. If in the performance of their functions under the law, they keep the principles which have formed the subject-matter of discussion in those chapters in mind for guidance, they cannot go astray from their path. Far from going astray, they will find that their contribution in the field of administration of justice has not been inconsiderable. The villagers will then have found in them a body of men composed of their own peers, who, by reason of their ability to dole out justice fairly, fearlessly and impartially, to foster harmonious relations in village life, to reduce litigation to a considerable extent and to have disputes settled quickly and without the inordinate delays ordinarily associated with courts of justice, are entitled to their esteem and gratitude. And the State will have found in them a simple and effective machinery for the administration of justice.

2. In conclusion, I would like to append hereto a few simple illustrations of how case records may be maintained and judgments written. No doubt, they will have to be understood subject to the rules, if any, made by State Governments with respect to the maintenance of records, the manner in which evidence should be recorded, the particulars to be contained in judgments, the method of filing exhibits and so on, but in furnishing them it is assumed that, by and large, they would be in conformity with the rules which may have been prescribed.

APPENDIX

These illustrations may give you an idea as to how case records may be maintained, but they will have to be understood subject to the rules, if any, on the subject.

Before the Nyaya Panchayat of Savoor
CIVIL SUIT NO. 10 OF 1963
Sundaram v. Murthy

1-3-1963	Sundaram appears in person and files a plaint with documents in support. Court fee and process fee paid. The suit appears to be in order. Register and issue summons to defendant for 15-3-1963. Sd/- Sarpanch 1-3-63.
15-3-1963	Summons received back with the report that defendant is away from the village. Fresh summons for 29-3-1963 on payment of fresh process fee. Sd/- Sarpanch 15-3-63.
29-3-1963	Defendant appears and files written statement. Plaintiff also present. The parties want the matter to be referred to Gopal and Raju, elders of village Savoor for settlement. Matter referred accordingly and case adjourned to 13-4-1963. Sd/- Sarpanch 29-3-63.
13-4-1963	Report from Gopal and Raju received that settlement not possible. Report filed in the proceedings. For hearing on 27-4-63, Parties informed. Sd/- Sarpanch 13-4-63.

27-4-1963 Plaintiff and defendant present and examined. Arguments heard. For judgment on 4-5-1963.

Sd/-
Sarpanch 27-4-63.

4-5-1963 Parties present. Suit decreed with costs.

Sd/-
Sarpanch 4-5-63.

Before the Nyaya Panchayat of Savoor

CIVIL SUIT NO. 10 OF 1963

Sundaram s/o Nagarajan resident of village Savoor

v.

Murthy s/o Ramaswamy resident of village Savoor.

Suit for recovery of Rs. 111.66 *on a promissory note.*

1. On 1-1-1962 the defendant above named borrowed from me Rs. 100 and executed a promissory note and receipt in my favour the same day agreeing to repay the loan with interest at the rate of 10% per annum on the expiry of one year from the date of the loan.

2. Early in January, 1963, I verbally demanded from the said defendant repayment of the said amount with interest. On his failure to repay the same I served him with a notice by registered post acknowledgment due.

3. The defendant has failed to make any payment despite the above notice.

4. The defendant resides within the jurisdiction of the nyaya panchayat. The value of the suit is Rs. 111.66. The fixed court fee of Re. 1 has been paid on the plaint.

5. It is prayed that a decree for Rs. 111.66 (Rs. 100 as principal, Rs. 11.66 as interest for the period from 1-1-1962 to 28-2-1963) be passed in favour of the plaintiff against the defendant with costs of this suit.

Dated 1*st March,* 1963.
Village Savoor.

Sd/- SUNDARAM
Plaintiff

Before the Nyaya Panchayat of Savoor

CIVIL SUIT NO. 10 OF 1963

Sundaram s/o Nagarajan resident of village Savoor

v.

Murthy s/o Ramaswamy resident of village Savoor.

Suit for recovery of Rs. 111.66 *on a promissory note.*

WRITTEN STATEMENT

1. I admit the allegations in paragraph 1 of the plaint.

2. On verbal demand of the Plaintiff, I repaid Rs. 110 (Rs. 100 as principal and Rs. 10 towards interest) on 2-1-1963. The Plaintiff promised to return the promissory note and receipt as token of due discharge a day later but failed to do so and on my demand told me that he had misplaced those documents. I believed the Plaintiff as to loss of the documents and did not further pursue the matter. I did not receive any registered notice as alleged in paragraph 2 of the plaint.

3. The suit may be dismissed with costs.

Dated 29th March, 1963
Village Savoor.

Sd/- MURTHY
Defendant.

Murthy s/o Ramaswamy, Defendant, aged 28 years, on solemn affirmation states :—

I know the plaintiff. I borrowed Rs. 100 from him on 1-1-1962. Interest was to be at 10% per annum. I executed the promissory note and receipt filed in the suit (Exhibits P. 1 and P. 2) agreeing to repay the amount with interest after a year. It is true that the plaintiff came to my house early in January, 1963, and demanded payment. I had the money ready with me and I paid to the plaintiff Rs. 110 which included Rs. 10 by way of interest. I demanded the return of the promissory note and the receipt but the plaintiff said that he had not brought those documents with him and that he would return them the next day. As we were good friends, I believed him. Next day I asked the plaintiff again to return the said documents. He said that he had misplaced them and that I need not worry about the return of the documents. In view of our friendship I did not pursue the matter further.

Cross-examined :

No one was present when I made the payment to the plaintiff or when I demanded from him on the next day the return of my documents. I did not receive any notice demanding repayment. The signature on the postal acknowledgment filed in the suit (Exhibit P. 3) is not mine. I kept the money ready because I knew that I had to repay the money early in January, 1963.

To the nyaya panchayat : I know how to sign. My signature is like this (Exhibit D. 1).

Sd/-
Sarpanch 27-4-63.

Sundaram s/o Nagarajan, Plaintiff, aged 40 years, on solemn affirmation states :—

I am the plaintiff. In the first week of January, 1963, I approached the defendant and demanded repayment of the principal sum and interest. He said that he had no money ready with him and that he would try to discharge the loan after a week or 10 days. I waited for about a month but when the defendant did not make any payment I sent a demand notice by registered

post acknowledgment due. Exhibit P. 3 is a copy of the registered notice and exhibit P. 4 is the postal acknowledgment signed by the defendant.

Cross-examined :

I deny that the defendant made any payment of the principal or interest or that he ever approached me for the return of the promissory note and the receipt. The signature on exhibit P. 4 is the defendant's signature.

Sd/-
Sarpanch 27-4-63.

CIVIL SUIT NO. 10 OF 1963

Sundaram v. Murthy

JUDGMENT

The suit is for the recovery of Rs. 111.66 (Rs. 100 as principal, Rs. 11.66 as interest for the period 1-1-1962 to 28-2-1963).

The defendant admits execution of the promissory note and the receipt but says that he has repaid the loan. He is not able to produce any witness to prove that he has repaid the loan. It is difficult to believe that he would have repaid such a large amount without taking care to have the promissory note and the receipt returned to him. It is also difficult to believe that he would have kept such a large sum as Rs. 110 ready with him in the house in anticipation of the plaintiff's visit. If his statement is true, he could have easily gone to the plaintiff who lives in the same village, repaid the amount and got back the documents. The signatures on the promissory note and the receipt appear to be similar to that on the postal acknowledgment. The signature of the defendant taken in our presence also resembles the signature on the postal acknowledgment. It is thus difficult to believe the defendant when he denies receipt of the registered notice.

In the result, the plaintiff's suit for Rs. 111.66 is decreed with costs.

Sd/-

Sarpanch

(2) } Panchas

(3)

Dated 4-5-1963.

Before the Nyaya Panchayat of Asti

CIVIL SUIT NO. 5 OF 1964

Radhe Shyam v. Kanhi

15-1-1964	Radhe Shyam appears in person and files a plaint. Court fee and procees fee paid. The plaint appears to be in order. Issue summons to defendant for 25-1-1964. Sd/- Sarpanch 15-1-64.
25-1-1964	Defendant appears and files written statement. Put up for hearing on 9-2-1964. Sd/- Sarpanch 25-1-64.
9-2-1964	Parties present. Our efforts to get the suit compromised not successful. Parties insist on trial. Evidence recorded and arguments heard. For judgment on 16-2-1964. Sd/- Sarpanch 9-2-64.
16-2-1964	Parties present. Judgment delivered. Suit dismissed. Sd/- Sarpanch 16-2-64.

Before the Nyaya Panchayat of Asti

CIVIL SUIT NO. 5 OF 1964

Radhe Shyam s/o Ghana Shyam, resident of village Asti.

v.

Kanhi s/o Mohan, resident of village Asti.

Suit for recovery of Rs. 10 *on account of hire charges*

1. On 1-11-1963 the above-said defendant took from me my plough on hire at the rate of Rs. 5 per month and agreed to return the plough after a month.

2. The defendant returned the plough to me only on 7-1-1964 and told me that he would pay the hire charges within a day or two.

3. The defendant has failed to pay the hire charges amounting to Rs. 10 despite repeated demands.

4. The defendant resides within the juridiction of the nyaya panchayat and the value of the suit is Rs. 10 and the fixed court fee of Re. 1 has been paid.

5. It is prayed that the suit be decreed for Rs. 10 together with costs of this suit in favour of the plaintiff against the defendant.

Dated 15-1-1964.

Sd/- RADHE SHYAM
Plaintiff

Before the Nyaya Panchayat of Asti

CIVIL SUIT NO. 5 OF 1964

Radhe Shyam s/o Ghana Shyam, resident of village Asti.

v.

Kanhi s/o Mohan, resident of village Asti.

Suit for recovery of Rs. 10 *on account of hire charges.*

WRITTEN STATEMENT

1. I admit the allegations in paragraph 1 of the plaint.

2. It is correct that I returned the plough on 7-1-1964. I paid Rs. 10 by way of hire charges to the plaintiff the same day in the presence of Shri Ram.

3. No amount is due to the plaintiff by be. The suit may be dismissed with costs.

Dated 25-1-1964.

Sd/- KANHI
Defendant.

D.W. 1 Kanhi s/o Mohan, aged 40 years, (defendant) on solemn affirmation states :—

I took plaintiff's plough on hire at the rate of Rs. 5 per month on 1-11-1963. I returned the plough to the plaintiff on 7-1-1964. I paid to the plaintiff on the date of return of the plough Rs. 10 by way of hire charges. I demanded from the plaintiff a formal receipt but he put me off saying that he did not know how to write. At that time Shri Ram s/o Radha Krishna was present.

Cross-examined :

Shri Ram too did not know how to write. He accompanied me to plaintiff's place to help me carry the plough. Shri Ram is my neighbour three doors away. It is wrong that Shri Ram and I belong to the same sub-caste.

Sd/-
Sarpanch. 9-2-64.

D. W. 2 Shri Ram s/o Radha Krishna, aged 30 years, resident of village Asti, on solemn affirmation states :—

I know the defendant. On the morning of 7-1-1964 the defendant called me to help him carry the plough to plaintiff's place. I was told that plaintiff's plough had been taken on hire by the defendant and that the defendant was going to return the same to the plaintiff. I accompanied the defendant to the plaintiff's house. The plough was returned to the plaintiff and at that time Rs. 10 was paid to the plaintiff by the defendant on account of hire charges. The defendant demanded a receipt but the plaintiff replied that he did not know how to write and that no receipt need be insisted upon.

Cross-examined :

I do not know how to write. I did not suggest that any other person should be called to the scene to write out the receipt. It is wrong that I have ever appeared as witness against the plaintiff

in any criminal case. I am not related to the defendant nor do we belong to the same sub-caste.

Sd/-
Sarpanch 9-2-64.

Radhe Shyam s/o Ghana Shyam, aged 45 (plaintiff) on solemn affirmation states :—

I am the plaintiff. The defendant borrowed my plough on 1-11-1963 on hire, agreeing to pay Rs. 5 per month as hire charges. He returned the plough on 7-1-1964. I am claiming only Rs. 10. It is wrong to say that the defendant paid me the hire charges.

Cross-examined :

No one accompanied the defendant when he returned the plough to me on 7-1-1964. I do not want to charge any hire for the 7 days in January. Shri Ram and the defendant are close friends. It is not true that the defendant asked me for a receipt.

Sd/-
Sarpanch 9-2-64.

CIVIL SUIT NO. 5 OF 1964

Radhe Shyam v. Kanhi

JUDGMENT

The suit is for the recovery of Rs. 10 on account of hire charges for two months on the plea that the defendant took plaintiff's plough on hire at the rate of Rs. 5 per month. The defendant admits that he took plaintiff's plough on hire at the rate of Rs. 5 per month, but pleads that he has already paid the hire charges of Rs. 10.

We tried our best to get this petty matter settled but without success.

The only point for our decision is whether the defendant has paid the plaintiff Rs. 10. In this connection we have the defendant's own testimony supported by that of Shri Ram. They both deposed that Rs. 10 were paid by the defendant to the plaintiff. We see no reason to disbelieve the defendant's version. It appears quite probable that Shri Ram accompanied the defendant when the plough was to be returned as the defendant would certainly have required help to carry it. The defendant and Shri Ram are not related in any way. There is no reason why Shri Ram should support the defendant's case if it is not true. It is also significant that the plaintiff does not wish to charge any hire for 7 days in January.

In the result, the suit is dismissed with costs.

Sd/- Sarpanch

1.
2.
3.
} Panchas

16-2-64.

Before the Nyaya Panchayat of Jabli

CRIMINAL CASE NO. 2 OF 1964

Kanshi Ram v. Paras Ram

6-1-1964 Complaint filed by the complainant Kanshi Ram in person. His statement on oath recorded. The complaint appears to require looking into. Process fee paid. Issue summons to accused for 20-1-1964. Complainant informed.

Sd/-
Sarpanch 6-1-64.

20-1-1964 Parties present with their witnesses. The parties are not willing to settle the matter, but want the case to proceed. Evidence of prosecution witnesses taken. Plea and statement of accused recorded. Arguments heard. For orders on 27-1-1964.

Sd/-
Sarpanch 20-1-64.

27-1-1964 Complainant and accused present. Orders passed convicting accused.

Sd/-
Sarpanch 27-1-64.

Before the Nyaya Panchayat of Jabli

CRIMINAL CASE NO. OF

Kanshi Ram s/o Mahesh Ram resident of Jabli—*Complainant*

v.

Paras Ram s/o Kali Ram resident of Jabli— *Accused*

The complainant submits as follows :—

The complainant lives in Jabli. On 5th January 1964, when the complainant got up early in the morning he found his goat missing. He had tied the goat to a neem tree outside his house the previous night. The complainant made a thorough search in the neighbourhood and asked his neighbour Bharat Ram s/o Govind Ram, resident of Jabli, whether he had seen the goat. Bharat Ram said that early in the morning he heard the bleating of a goat from a distance. He found someone leading the goat by its tether at a distance. He said that he thought it was myself leading the goat and therefore did not make any enquiry. Later in the day when the complainant went to the market, another neighbour of his by name Mansuk Ram s/o Naik Ram, resident of Jabli, told him that Paras Ram s/o Kali Ram resident of Jabli was found taking a goat in the direction of his house. Immediately the complainant went to the accused's house along with the said Mansuk Ram and found the goat tethered in the backyard of his house. Paras Ram was asked where he got the goat from. He said that the goat belonged to him. At that time three or four neighbours intervened and released the goat to the complainant. The complainant's goat is black in colour and about 3 years old. The horns are curved and there are white spots on the neck. It is prayed that suitable action be taken against the said accused.

Dated 6-1-1964.

Sd/- KANSHI RAM s/o MAHESH RAM
resident of village Jabli
Complainant.

Statement of Kanshi Ram s/o Mahesh Ram, aged 32 years, resident of Jabli, complainant, on solemn affirmation :—

I am the complainant. On the night of 4th January, 1964, I tethered my goat as usual to a neem tree in front of my house before going to bed. Next morning when I got up, I found the goat missing. I made enquiries, particularly from my neighbour Bharat Ram and he said that he heard the bleating of a goat from a distance and when he looked up he found somebody leading a goat at a distance. He thought that I was leading my goat. Later in the day, when I went to the market, I met Mansuk Ram s/o Naik Ram and when I told him about the missing goat he said that he had seen the accused Paras Ram taking a goat in the direction of his house.

Immediately Mansuk Ram and I went to the accused's house and found my goat tied in his backyard. On being approached, Paras Ram refused to part with the goat saying that it belonged to him. Then the neighbours who gathered there intervened and had the goat released to me.

Sd/- KANSHI RAM
Complainant.
Dated 6-1-64

Sd/-
Sarpanch 6-1-64.

Deposition of Kanshi Ram, P.W. 1, s/o Mahesh Ram, resident of Jabli, aged 32 years, on solemn affirmation :—

I live in Jabli. On 5th January 1964, when I got up in the morning, I found my goat missing. I had tied the goat to a neem tree in front of my house the previous night. I made a thorough search in the neighbourhood and asked my neighbour Bharat Ram whether he had seen the goat. Bharat Ram said that early in the morning he heard the bleating of a goat from a distance. He found someone leading a goat by its tether at a distance. He said that he thought it was myself leading the goat and therefore did not make any enquiry. Later in the day when I went to the market, another neighbour of mine by name Mansuk Ram told me that Paras Ram s/o Kali Ram, a resident of my village, was found taking a goat in the direction of his house. Immediately I went to the accused's house along with the abovesaid Mansuk

Ram and found the goat tethered in the backyard of his house. We asked Paras Ram where he got the goat from. He said that the goat belonged to him. At that time three or four neighbours intervened and released the goat to me. My goat is black in colour, aged about 3 years. Her horns are curved and it has white spots on the neck. The goat is now in court.

Cross-examined :

I purchased the goat in the market last year for Rs. 25. Bharat Ram and I are not related. I did not report the matter to the police because the police station is far away. I met Mansuk Ram roundabout 4 P.M. Mansuk Ram does not owe me any money. I have no enmity with the accused.

Sd/-
Sarpanch 20-1-1964.

Deposition of Bharat Ram, P.W. 2, s/o Govind Ram, resident of Jabli, aged 35 years, on solemn affirmation :—

I know the complainant. I live two doors away from him. On the 5th morning, when I was going towards my field I heard the bleating of a goat a little away from the complainant's house. I saw somebody leading a goat by its tether. As it was at a distance. I could not make out the identity of the person leading the goat. About an hour later, the complainant met me and told me about the loss of his goat and I told him what I saw. In the evening, the complainant told me that the goat was traced in the backyard of the accused's house. The goat now before the court is the goat belonging to the complainant.

Cross-examined :

I have seen the goat in question with the complainant for the last six months or so. He generally used to tether it in front of his house. The day had not yet dawned when I heard the bleating of the goat and I could not clearly see the face of the man who was taking the goat. I thought it might be the complainant himself. I did not make any enquiry. I have no special intimacy with the complainant.

Sd/-
Sarpanch 20-1-1964.

Deposition of Mansuk Ram, P.W. 3, s/o Naik Ram, resident of Jabli, aged 30 years, on solemn affirmation :—

I belong to Jabli village. I know the parties in this case. On the afternoon of 5-1-1964 the complainant met me in the market in Jabli, and he then told me that his goat was missing since early morning that day. Then I told him that I had seen the accused leading a goat similar to the goat belonging to the complainant. Then the complainant took me to the accused's house and both of us found the missing goat tied to a pole in the accused's backyard. When we asked him to release the goat he said that it belonged to him. Some neighbours of the accused who had gathered there intervened and had the goat released. The goat before the court was the animal which the accused was leading towards his house.

Cross-examined :

I have been to the complainant's house several times and I have seen his goat. It was about 4 O'clock in the evening when the complainant met me in the market. I had gone to the market to purchase fodder for my cattle. There has been no money transaction between me and the complainant. When the complainant mentioned about the missing goat I immediately recollected seeing the accused leading a goat. Then the complainant asked me what was the description of the goat which I saw with the accused. I told him that it was black in colour with some white spots on the neck. Then the complainant told me that his goat was also of the same description. I had not yet purchased the fodder when the complainant met me in the market. I purchased the fodder only after returning from the accused's house after the complainant left for his house.

Sd/-
Sarpanch 20-1-1964.

Plea and statement of Paras Ram s/o Kali Ram, resident of Jabli, aged 34, accused.

Plea. Not guilty.

This is a false case brought against me out of spite. I and the complainant are not on good terms. I have no witnesses.

Sd/-
Sarpanch 20-1-1964.

Criminal Case No. 2 of 1964

Kanshi Ram *v*. Paras Ram

JUDGMENT

The complainant Kanshi Ram alleges that on the morning of 5th January, 1964, he found his goat, which was tethered to a neem tree in front of his house, missing, and that on enquiry in the neighbourhood he received information from one Bharat Ram that he found somebody leading the goat that morning at a distance from his house and that one Mansuk Ram whom he met later in the market also told him that he had seen the accused leading a goat in the direction of his house. It is further alleged that subsequently the complainant and the said Mansuk Ram found the missing goat in the accused's backyard and that on the intervention of the neighbours, the goat was released to the complainant.

The complainant says that his goat is black in colour and has curved horns and that it has white spots on the neck and that he purchased it about 6 months earlier. That the complainant had a goat in his possession for a long time is corroborated by his witnesses. The description of the goat is also confirmed by Mansuk Ram. The evidence in the case clearly shows that the complainant's goat was recovered from the custody of the accused. On the other hand, the accused has not produced any evidence to show that the goat belonged to him. He has merely stated that this is a false case but there is nothing to show why the complainant and his witnesses should make false allegations against the accused.

In the circumstances, we find the accused guilty of theft, an offence punishable under section 379 of the Indian Panel Code. The goat has been already recovered. We sentence the accused to a fine of Rs. 10 only.

Sd./-

1. Sarpanch
2. }
3. } Panchas
4. }
5.

Dated 27-1-1964.

Before the Nyaya Panchayat of Nagra

CRIMINAL CASE NO. 7 OF 1963

Sri Ram *v.* Rohan

31-1-1963 Sri Ram appears in person and files a complaint against Rohan. Complainant's statement on oath recorded. Process fee paid. Let the complaint be registered and referred to Bench No. 3.

Sd./-
Sarpanch 31-1-63.

7-2-1963 Case put up before Bench No. 3. Issue summons to accused for 21-2-63. Also issue notice to complainant for that date.

Sd./-
Chairman of Bench No. 3
7-2-63.

21-2-1963 All five members of the Bench present. Complainant present. Summons returned with the remark "accused not found". Issue fresh summons for 28-2-1963 on payment of fresh process fee.

Sd./-
Chairman of Bench No. 3
21-2-63.

28-2-1963 All members of the Bench present. Complainant present. Application made on behalf of accused that he is ill and unable to attend. Fix 14-3-63 for hearing. Warn both parties.

Sd./-
Chairman of Bench No. 3
28-2-63.

14-3-1963 All members of the Bench except Shri Kanahya Lal present. There is quorum. Complainant and accused present with witnesses. Efforts at compromise have not succeeded. Complainant and

his witnesses examined. Accused pleads not guilty and examines one witness. Judgment on 21-3-63.

Sd./-

Chairman of Bench No. 3

14-3-63.

21-3-1963 Complainant and accused present, Judgment delivered.

Sd./-

Chairman of Bench No. 3

21-3-63.

Before the Nyaya Panchayat of Nagra

CRIMINAL CASE NO. OF

Sri Ram s/o Kalu Ram, resident of Nagra—*Complainant*

v.

Rohan s/o Kishin Chand, resident of Nagra—*Accused*

The complainant submits as follows :—

1. The complainant and the accused belong to the same village and have been neighbours for a long time.

2. On the morning of January 28, 1963, there was some quarrel between the son of the complainant and the son of the accused, whereupon the accused, in the company of another person who is not known to the complainant, came to the house of the complainant at about 1 P.M., called him out and started abusing him.

3. The complainant asked the accused not to abuse him stating that otherwise he would have to complain to the Nyaya Panchayat. Thereupon the accused started kicking and beating the complainant after asking his companion to catch hold of the complainant. The complainant then shouted for help and some neighbours came to his rescue. The accused immediately left the place threatening serious consequences in case any legal action was taken. The complainant had to get medical treatment for the injuries sustained.

4. The occurrence has been seen by several persons including Mohan Lal and Kishan Lal.

It is, therefore, prayed that the accused be tried and punished according to law.

Sd./- SRI RAM
Complainant
Dated 31-1-1963.

Statement of Sri Ram s/o Kalu Ram, aged 40, resident of Nagra, on solemn affirmation :—

I am the complainant. Immediately after mid-day on the 28th. January, Rohan, the accused, came to my house in the company of another person whom I do not know, called me out and started abusing me stating that I do not know how to control my son and that my son had beaten his son. I tried to pacify the accused,

but as he went on abusing me I said I will have to complain to the nyaya panchayat. Thereupon the accused asked his companion to catch hold of me and started beating and kicking me. I shouted for help when my neighbours Mohan Lal and Kishan Lal came upon the scene. The accused immediately left the place threatening me with serious consequences if I took any legal proceedings. I had to get medical treatment for the injuries received.

Sd./- SRI RAM s/o KALU RAM
Complainant.
Dated 31-1-1963.
Sd/- Sarpanch
31-1-63

P.W. 1, Sri Ram, complainant, son of Kalu Ram, aged 40, residing at village Nagra, states on solemn affirmation :—

At about mid-day on January 28, 1963, I was in my house when Rohan, the accused now present in Court, called me out. I went out and found the accused along with another person standing. The accused complained to me that my son had beaten his son and that I was not keeping my son under control. I tried to pacify him, but he refused to be pacified and started abusing me. I said that if he went on abusing me I will have to complain to the nyaya panchayat whereupon he asked his companion to catch hold of me and then started beating me and kicking me. I cried for help and Mohan Lal and Kishan Lal came to the spot. Thereupon the accused went away threatening that if I complained to the nyaya panchayat, serious consequences would follow. I received a few injuries for which I received treatment in the local civil dispensary the same day. This is the outpatient chit given to me (Ex. 1).

Cross-examined :

My son told me that there had been a quarrel between him and the son of the accused. I do not know if my son had had any such quarrels previously. The accused never complained to me before about my son. I cannot tell how many kicks or blows were given to me by the accused but they were many. The occurrence took place sometime between 1 and 2 P.M. I have no enmity with the accused. It is wrong to suggest that I abused

him and beat him that morning. I went to the village dispensary shortly thereafter, say at about 4 P.M.

Sd./-
Chairman of Bench No. 3
14-3-63.

P.W. 2, Kishan Lal s/o Radha Mohan, aged 40 years, resident of Nagra village, states on solemn affirmation :—

About a month or two ago I heard Sri Ram crying for help. I live very near the house of the complainant. I ran out and found that the accused was kicking and beating him. There was another person with the accused. On my reaching there, the two persons ran away.

Cross-examined :

I cannot say what the accused was saying to the complainant. He did say something, but I could not hear it as I was at some distance then. I know the accused but I do not know the other person. I saw the accused give two or three kicks in my presence. I have no quarrel with the accused. The complainant is of my caste.

Sd./-
Chairman of Bench No. 3
14-3-63.

P.W. 3, Mohan Lal s/o Bhagwan Das, aged 30 years, residing at Nagra village, states on solemn affirmation :—

About a month or two ago, it was noon time, when I heard Sri Ram shouting for help. I live near the complainant's house. On hearing his shouts I came out of my house and found that he was being beaten by two persons. One of them was the accused. By the time I reached the spot, the accused had run away.

Cross-examined :

I cannot say whether any one had caught hold of the complainant. Everything happened in a very short time. I could see the accused giving two or three blows to the complainant. I am

not of the same caste as the complainant. I have no business dealings with him. He is my neighbour. The time of occurrence was about mid-day.

Sd./-
Chairman of Bench No. 3
14-3-63.

Plea and statement of Rohan s/o Kishin Chand, resident of Nagra, aged 38 years, accused :—

Plea. Not guilty.

There was a quarrel between myself and the complainant that morning and the complainant abused me in very bitter terms. This is a false case brought against me in order to anticipate any action by me for the abuse.

D.W. 1, Kishan Singh s/o Kanhai, aged 30 years, resident of Nagra village, on solemn affirmation :—

In January this year at about 10 A.M. when I was going to the field, I saw a quarrel going on outside the house of Rohan. The quarrel was between Sri Ram and Rohan. Sri Ram accompanied by his son was abusing the accused.

Cross-examined :

I normally go to the field at about 7 A.M. That day I went late. There was no particular reason for being late that day. I do not know the names of English months. January, of course, I know. I can also name one or two other months but not all. We are now in the month of March. I cannot tell the name of next month.

Sd./-
Chairman of Bench No. 3
14-3-63.

CRIMINAL CASE NO. 7 OF 1963

Sri Ram *v.* Rohan

JUDGMENT

The complainant Sri Ram says that on January 28, 1963, at about 1 P.M. the accused Rohan along with another person came to the house of the complainant, called him out and assaulted him causing him injuries. The motive for the offence is alleged to be a quarrel between the sons of the complainant and the accused. The accused denies the allegation and contends that the complainant himself had abused him that very morning and has filed this complaint to forestall any action by the accused.

In support of his case the complainant has examined himself and two other witnesses. The witnesses, Kishan Lal and Mohan Lal who live near the house of the complainant are eye witnesses. They seem to be independent witnesses and have no enmity with the accused. The complainant has also produced the outpatient chit given to him by the village dispensary for treatment. It is dated the same day as the day of occurrence. On the other hand, the plea of the accused appears to be unbelievable. His story of a quarrel with the complainant on the morning of the occurrence appears to be a false one as he has taken no action thereon so far. His witness Kishan Singh does not appear to be reliable. This witness is not able to give any satisfactory reason as to why he was late in going to his field on the day of occurrence and he has also no idea of English calendar months.

Under the circumstances, our finding is that the accused Rohan voluntarily caused hurt to the complainant and we convict him of an offence under section 323 I.P.C. and sentence him to pay a fine of Rs. 20.

Sd./-

1. Chairman
2. } Panchas
3.

Bench. No. 3.
Dated 21-3-63.

L2 CD&C/64—40,000—(Sec. II)—25-7-64—GIPF.

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